Public Employment Law

John Sanchez∗
2000 Survey of Florida Public Employment Law

John Sanchez

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I. INTRODUCTION

Public sector employment law overlaps and diverges from the law governing private employment. Several federal laws governing private employment, such as collective bargaining, occupational health and safety, and employee benefits and pensions do not apply to public employees. For this reason, the State of Florida has enacted laws that govern only public employees in these areas. At the same time, public employees may bring...
claims under the federal and state constitutions that are unavailable to private sector employees. As for overlap, a wide array of federal and state statutes govern both private and public employment in the areas of civil rights, wages and hours, and family medical leave.

This article explores the several stages of public employment, beginning with the law governing the hiring of employees. Part I outlines the law governing civil service examinations. Related issues include whether public employers are prohibited from hiring relatives and whether cities and counties may face liability if they fail to check the criminal background of applicants for employment. Finally, this section discusses some local governments that require certain public employees to live in the same county in which they work.

Part II explores the law governing public officials who are often held to higher standards than rank and file public employees. For example, state and local ethics commissioners regulate the behavior of public officials who break the law in a variety of ways: from flawed financial disclosures; violations of campaign finance laws; lobbying by former public officials; conflicts of interest; and unfair campaign tactics. This section also examines the new state task force aimed at policing public corruption. Wrongdoing on the part of public officials is broken down by job title, judges, city and county officials, police officials, government inspectors, legislators, and others.

Part III examines the law governing the terms of public employment. For example, this section discusses the efforts that are underway to remedy the wage gap between men and women. Under the Equal Pay Act men and women must receive equal pay for equal work, however gender gap has yet to be bridged. Some courts have even questioned Congress’ authority to extend the Equal Pay Act to the states, a question the United States Supreme Court may soon be called upon to sort out. This section also examines issues raised under federal, state, and local prevailing wages law. In addition, Part III looks at efforts to regulate the way public employees dress. A wide array of employee benefits is examined including: jury duty release; domestic partnership benefits; family medical leave rights; health benefits; public pension issues; and unemployment compensation benefits. Employee privacy is also addressed in this section, including issues of drug testing, financial disclosures, and prying into the private lives of public employees.

Part IV surveys the wide range of legal issues surrounding the disciplining and discharging of public employees. While it is harder to dismiss an employee for off-duty misconduct than for on-the-job wrongdoing, both categories are addressed. Public employers are advised to take care in the disciplining of whistleblowers who report public wrongdoing to ensure that any punishment meted out is not in retaliation for expressing views protected, for example, by the First Amendment. This section also
canvasses federal, state, and local anti-discrimination laws that protect public employees from being singled out on the basis of race, gender, religion, age, or disability. Part IV additionally discusses what remains of affirmative action in public employment. Finally, this section ends with a review of the array of remedies available for wrongful discipline or dismissal, including money damages, attorneys’ fees, and reinstatement.

Part V looks at the law governing collective bargaining in the public sector. This section sums up the largest public employee union vote taken in South Florida in over a decade at four public hospitals after a bitter campaign. In addition, Part V offers statistical data on public sector unions and ends with a brief discussion of labor disputes involving public school teachers and police officers after negotiations over terms of a labor contract reached an impasse.

II. HIRING

A. Housing for Public Employees

The United States Department of Housing and Urban Development (“HUD”) launched a program aimed at selling HUD-owned homes to police at half-price. The initiative was expanded to public and private school teachers. Two Miami-Dade school teachers have already purchased foreclosed homes at half-price. Under the federal program, known as the “Teacher Next Door” project, the half-price offer is only open to those teachers willing to buy in “revitalization areas,” meaning low to middle income neighborhoods. Under the program, “[t]eachers must live in the county in which they work.”

The Hollywood City Commission is contemplating a similar program, known as the “Officer Next Door,” that taps drug forfeiture money to pay police officers to live in neighborhoods singled out for redevelopment. Under the program, officers would live rent-free in four neighborhoods.

1. Andrea Robinson, Teachers Get Homes Under HUD Program, MIAMI HERALD (Broward), June 7, 2000, at 1B.
2. Id.
3. Id.
4. Id.
5. Frank Davies & Susan Ferrechio, Half-price Homes Offered to Teachers, MIAMI HERALD (Broward), Mar. 14, 2000, at 1B.
6. Id.
7. Erika Bolstad, Hollywood Plan Gives Some Cops Free Rent, MIAMI HERALD (Broward), May 3, 2000, at 1B.
8. Id.
their part, officers must sign three-year leases and agree to pay utility bills and maintain the premises.\(^9\)

By contrast, four correctional officers suspected of beating an inmate to death are under investigation.\(^{10}\) As a result, the officers are being evicted from state-owned housing.\(^{11}\) Accordingly, "[b]ecause they are not able to come into work, there’s no more reason for [the Department of Corrections] to keep them in state housing."\(^{12}\)

The Monroe County Sheriff’s Office is losing personnel primarily due to the shortage of affordable housing.\(^{13}\) Since the turnover rate among deputy sheriffs has doubled over the past few years, short staffing has led to mandatory overtime and twelve-hour shifts over extended periods.\(^{14}\) A deputy who pays $1200 a month for a two-bedroom apartment pays more than half of his $2250 monthly salary in rent.\(^{15}\)

B. Nepotism and Cronyism in Hiring

Hiring people to fill positions solely by reason of their blood or marital relationship has become an increasing problem in Florida. For example, the Miami-Dade County School District has been accused of hiring unqualified relatives to fill open slots in a program aimed at helping welfare recipients move into the work-force.\(^{16}\) Although Florida’s public school districts are not covered by anti-nepotism laws, the county will seek corrective action if the allegations turn out to be true.\(^{17}\) In response, top school administrators insisted their relatives received no special treatment.\(^{18}\) Similarly, the Florida Commission on Ethics found probable cause to believe that a Miami-Dade Fire Rescue official may have violated the state’s anti-nepotism law and

9. Id.
10. Steve Bousquet, State Evicts Prison Guards Probed in Death, MIAMI HERALD (Broward), Sept. 23, 1999, at 12B.
11. Id.
12. Id.
13. Nancy Klingenier, Deputies Hit Hard by Costs of Living, MIAMI HERALD (Broward), Aug. 22, 1999, at 6B.
14. Id.
15. Id.
16. Jack Wheat & Analisa Nazareno, Dade Officials Investigate Possible School District Nepotism, MIAMI HERALD (Broward), Feb. 8, 2000, at 8B.
17. Id.
18. Tom Dubocq, Dade Schools Executives Defend Hiring of Relatives, MIAMI HERALD (Broward), Feb. 9, 2000, at 12B.
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abused his office by aiding his brother. If the charges are sustained, the top official could face dismissal or a $10,000 fine.

Some Broward judges have come under criticism for selecting public defenders from the ranks of relatives and friends. Judges are left with total discretion in selecting public defenders when the public defender’s office is unable to represent a defendant owing to a conflict. Such specially appointed public defenders receive $700 for every felony case, no matter how much time is invested.

C. Hiring Restrictions and Hiring Strategies

Although it has been seven years since Florida voters imposed term limits on state lawmakers, it was not until September 1999, that the Supreme Court of Florida sustained the cap. The per curiam ruling turned back a challenge from long-term state senators who claimed that voters were targeting members of Congress, not state legislators. About half the state house and a quarter of state senators will be affected by the term limits amendment to the Florida Constitution in 2000. After eight years, state lawmakers face mandatory retirement. By contrast, the United States Supreme Court concluded in 1995 that efforts to set term limits for members of Congress were unconstitutional.

An affirmative action officer was dismissed after writing critical accounts of Fort Lauderdale’s poor record on hiring minority and female employees. Shortly after being fired, the officer sought another job with

19. Don Finefrock, Nepotism Charges Reviewed, MIAMI HERALD (Broward), June 11, 2000, at 3B.
20. Id.
21. Larry Lebowitz & Sabrina L. Miller, Friends of the Court, MIAMI HERALD (Broward), Jan. 23, 2000, at 1A.
22. Id.
23. Id.
25. Id. at 1278.
26. Lesley Clark, Florida Term Limits Upheld, MIAMI HERALD (Broward), Sept. 3, 1999, at 1A.
27. Id.
29. Brad Bennett, Fired Official Wants New Post, MIAMI HERALD (Broward), May 8, 2000, at 1B.
the city.\textsuperscript{30} Fort Lauderdale, however, has a rule that prohibits rehiring employees the city has previously terminated.\textsuperscript{31}

The tight job market has left the Broward Sheriff’s Office (“BSO”) with 100 open positions.\textsuperscript{32} In an effort to quickly fill the vacant positions, the BSO held a job fair.\textsuperscript{33} The BSO, however, required applicants to be United States citizens, over age nineteen, have a high school diploma or equivalent, and have no felony or misdemeanor convictions involving certain crimes.\textsuperscript{\textsuperscript{34}}

\section*{D. Civil Service Examinations}

Police officers complained to the Miramar Civil Service Board after the first half of a two-part sergeant’s exam was rescored.\textsuperscript{35} With only seventy-five questions, the regraded exam enabled sixteen police officers, who had initially failed, to qualify for the second round of testing.\textsuperscript{36} Some of the questions on the exam were eliminated after test takers grumbled that they covered subject matter not found in the study guides.\textsuperscript{37}

\section*{E. Background Checks}

Eighty-five percent of all employers undertake no background investigation of job applicants.\textsuperscript{38} For example, an investigation by the BSO revealed that Broward County’s district hiring chief failed to disclose a twenty-year-old shoplifting arrest.\textsuperscript{39} As a result, the BSO has recommended that the school district revamp the way it investigates backgrounds of potential employees.\textsuperscript{40} Similarly, the \textit{St. Petersburg Times} ran a background check on 511 state correctional officers and learned that eighty-nine had arrest records for such crimes as shoplifting, marijuana possession, and

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\textsuperscript{30.} \textit{Id.} \\
\textsuperscript{31.} \textit{Id.} \\
\textsuperscript{32.} Johnny Diaz, \textit{Sheriff’s Office Hosts Job Fair to Help Fill Deputy Openings}, \textit{MIAMI HERALD} (Broward), Aug. 25, 1999, at 11B. \\
\textsuperscript{33.} \textit{Id.} \\
\textsuperscript{34.} \textit{Id.} \\
\textsuperscript{35.} Juan Carlos Rodriguez, \textit{Rescored Tests Create Flap for Miramar Police}, \textit{MIAMI HERALD} (Broward), May 27, 2000, at 1B. \\
\textsuperscript{36.} \textit{Id.} \\
\textsuperscript{37.} \textit{Id.} \\
\textsuperscript{38.} Bea Garcia, \textit{Background? Check it Out}, \textit{MIAMI HERALD} (Broward), Oct. 12, 1999, at 1C. \\
\textsuperscript{39.} Elena Cabral, \textit{Review: Hiring Process Flawed}, \textit{MIAMI HERALD} (Broward), Nov. 2, 1999, at 1B. \\
\textsuperscript{40.} \textit{Id.}
\end{tabular}
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hunting out of season. In a similar situation, eleven guards, including two repeat offenders, were arrested for violent crimes. However, state law governing guards only rules out hiring applicants convicted of a felony or first-degree perjury. Additionally, the BSO background check on its new police chief cleared the new head of the police department of rumors that she fired her gun in a domestic dispute ten years earlier when she was a major with the Miami Police Department.

F. Negligent Hiring

Failure by a public employer to undertake a reasonable background check on prospective employees may leave it open to the charge of negligent hiring, a fairly recent tort claim. Worse, the employer who knows it is hiring an individual with a record of sexual harassment, for example, may wind up liable for damages along with the harasser who strikes again.

G. Residency

Some cities and counties require that certain public employees and public officials reside in the city or county in which they work. For example, Hialeah has a one year residency requirement for candidates running for city council. In October 1999, Hialeah’s mayor claimed that a candidate who was challenging the mayor’s ally on the council violated the city’s residency rule. In response, the candidate criticized the mayor for

41. The Associated Press, Report Says One in Six Guards at Florida State Prison has Record, MIAMI HERALD (Broward), Aug. 30, 1999, at 8B.
42. Id.
43. Id.
44. David D’Addio, Miramar Employees to See Increase in Insurance Payments, MIAMI HERALD (Broward), Aug. 19, 1999, at 3B.
46. See, e.g., Ajowa Nzinga Ifateyo, Receptionist Wins Sex-Assault Suit, MIAMI HERALD (Broward), Apr. 5, 2000, at 10B. (reporting case in which Miami federal jury held Opa-locka liable in the negligent hiring of a former city manager who sexually harassed and assaulted a city receptionist and awarded a two million dollar judgment against both the harasser and the city).
47. Karen Branch, Hialeah Mayor Uses Police Files to Challenge Candidate, MIAMI HERALD (Broward), Oct. 8, 1999, at 9B.
48. Id.
asking the police to investigate the candidate’s background. The candidate claimed that police surveillance of his private life was improper.

In order to sit on Miramar’s commission board, which oversees hiring practices for city employees, the candidate generally must be a resident of the city. State law requires Miami-Dade School Board candidates to live in the voter district on the date they file to run for the board. Questions cropped up in one case examining whether a candidate for the District Seven School Board seat lived in District Six or in District Seven.

H. Workforce Development Bill

Privatization may be Governor Jeb Bush’s key legacy as governor. Under his administration, efforts are underway aimed at privatizing public pensions, state prisons and county jails, work-release facilities, state hospitals, and public schools. Most recently, a bill before the 2000 Legislature was aimed at transferring many of the Department of Labor’s job-creation duties to a public-private entity known as Workforce Florida Inc., a corporation with a board of directors. Democrats and labor unions opposed the measure after a House Appropriations Subcommittee approved the bill, claiming that the bill removes some of organized labor’s guaranteed seats on boards that regulate job-training programs.

I. Selection of Trial Judges: November 2000 Ballot Measure

The Legislature debated, but ultimately failed to enact, a bill aimed at giving Governor Jeb Bush more power and clout on the commissions that submit nominations to the governor for all appellate judges and for midterm

49. Id.
50. Id.
51. See D’Addio, supra note 44.
52. Analisa Nazareno, Residency Again Issue in Race, MIAMI HERALD (Broward), July 25, 2000, at 7B.
53. Id.
54. Editorial, Open Door to Jail, MIAMI HERALD (Broward), Aug. 11, 1999, at 10A.
56. See Shari Rudavsky, State Hospital’s Privatization Goes Smoothly—So Far, MIAMI HERALD (Broward), Aug. 17, 1999, at 4A.
57. Editorial, House Amends Workforce Florida Bill, MIAMI HERALD (Broward), May 5, 2000, at 9B.
58. Robert Sanchez, House Bill Criticized as Hostile to Unions, MIAMI HERALD (Broward), Apr. 27, 2000, at 10B; see also CS/SB 2050, 2000 Leg. (Fla. 2000).
vacancies on trial courts. A Miami Herald editorial criticized these measures as eroding the independence of the judiciary. Moreover, Floridians voted on November 7, 2000 to keep the current system of electing trial judges rather than handing that power over to the government.

III. REGULATION OF PUBLIC OFFICIALS

A. Ethics

The Florida Commission on Ethics is "the state board that recommends punishment for public officials who violate ethics laws." Formed in 1974, the commission reviews complaints filed by individual citizens against public officials. The governor appoints its members.

In May 2000, the Florida House of Representatives defeated a package of reforms that had been approved by the Senate, aimed at strengthening the state's ethics, campaign finance, and anti-corruption laws. Recommendations by the Study Commission on Public Corruption included stiffer financial disclosure laws and longer criminal sanctions for public corruption. The proposal also contains an exemption to the state's Sunshine Laws aimed at preserving the confidentiality of whistleblowers. An editorial in the Miami Herald labeled the House's inaction as "an outrage and insult to voters and taxpayers."

The Florida Commission on Ethics has faced a number of issues this past year. In March 2000, the commission issued a special waiver for five former state lawmakers holding top posts in the governor's administration, enabling them to lobby their former colleagues during the 2000 session. The waiver undercuts the Sunshine Amendment aimed at stopping influence

60. Editorial, Stacking, Packing the Bench: Leave the Nominating Process Alone, MIAMI HERALD (Broward), Apr. 3, 2000, at 12B.
61. Jay Weaver, County Voters Reject Bid to Allow Governor to Appoint Trial Judges, MIAMI HERALD (Broward), Nov. 8, 2000, at 14B.
62. Steve Bousquet, Broward Clergymen Named to State Ethics Commission, MIAMI HERALD (Broward), Aug. 21, 1999, at 3B.
63. Id.
64. Id.
65. Editorial, How About Zero Tolerance for Public Corruption?, MIAMI HERALD (Broward), May 9, 2000, at 10B.
66. Id.
67. Id.
68. Id.
69. Lobbyist Rules Eased for Ex-legislators, MIAMI HERALD (Broward), Mar. 17, 2000, at 9B.
peddling by barring lawmakers from lobbying for two years after leaving office.\footnote{70}

In another ethics violation case, the commission levied its largest fine in twenty-five years, $20,000, against a college professor who hid his financial interest in a privately operated state prison system he openly promoted while a professor of criminology at the University of Florida.\footnote{71} In spite of the violation, the professor received a $3 million consulting fee for brokering a merger concerning the Corrections Corporation of America.\footnote{72} The professor was hired by the state to serve as a consultant on a study to privatize the state prison system.\footnote{73}

Florida’s Commission on Ethics also found probable cause to fine public employees in other situations. One example concerned a Pembroke Pines mayor who had a conflict of interest when he took part in a vote to modify an agreement for advertising involving a man with whom the mayor had a consulting arrangement.\footnote{74} Another example was a Miami-Dade Fire Rescue official who may have violated the state’s anti-nepotism law.\footnote{75} The commission also found that a Miami state representative had failed to report “a $22,000 debt for unpaid child support during an election campaign”—a special legislative committee was convened to determine his fate.\footnote{76} On the other hand, the commission found no probable cause when Davie’s vice mayor had a conflict of interest arising from his association with a law firm which represented a firefighters’ union.\footnote{77} Despite the commission’s efforts to fine public employees for ethical violations, the court has imposed a standard of clear and convincing evidence that must be met before any penalty can be imposed.\footnote{78}

The Florida Commission on Ethics exonerated public officials in many cases. For example, Miramar’s mayor was cleared of claims that she secured a discount on her new residence as quid pro quo for favorable votes for a

\footnotetext{70}{Id.}  
\footnotetext{71}{Steve Bousquet, \textit{Ex-professor Gets Largest Ethics Fine}, \textit{Miami Herald} (Broward), Oct. 22, 1999, at 9B.}  
\footnotetext{72}{Id.}  
\footnotetext{73}{Id.}  
\footnotetext{74}{\textit{Ethics Panel Frowns on Pines Mayor’s Vote}, \textit{Miami Herald} (Broward), Sept. 9, 1999, at 6B.}  
\footnotetext{75}{Finefrock, \textit{supra} note 19, at 3B.}  
\footnotetext{76}{Lesley Clark, \textit{Panel to Decide Penalty for Barreiro’s Ethics Breach}, \textit{Miami Herald} (Broward), Jan. 28, 2000, at 8B.}  
\footnotetext{77}{Adam Ramirez, \textit{Charges Against Davie Official Dropped}, \textit{Miami Herald} (Broward), June 7, 2000, at 3B.}  
\footnotetext{78}{Latham v. Fla. Comm’n on Ethics, 694 So. 2d 83, 84 (Fla. 1st Dist. Ct. App. 1997); \textit{see also} Fla. STAT. §§ 112.313–316 (2000).}
Also, a Sunrise city commissioner was cleared of allegations that she omitted to report a free gym membership. Miramar's city commissioner, another exonerated public official, was cleared of charges that he lobbied commissioners while receiving money from developers.

Not every conflict of interest involving public officials, however, is unethical. For example, in one case a state representative from Dania Beach doubled as the city's code enforcement attorney. The conflict arose over code enforcement of a local convenience store owned by the state representative's uncle by marriage. Even so, the state ethics commission did not find a conflict of interest violation.

In January 2000, Broward county commissioners enacted an ordinance urging candidates for elected office to voluntarily agree not to make race, religion, gender, national origin, or sexual orientation a campaign issue. Further, those running for public office pledged not to publish anonymous campaign literature. Violators of the ordinance will face censure by the Fair Campaign Practices Committee ("FCPC"). Elected officials are prohibited from serving as members of the committee. Although fines and removal of candidates from ballots have been ruled out as remedies, the FCPC may still alert the media of unfair campaign tactics. Regulating campaign rhetoric walks a fine line between maintaining fair elections and interfering with the First Amendment rights of candidates for public office.

79. Caroline J. Keough, Moseley Cleared of Ethics Complaint, MIAMI HERALD (Broward), Dec. 3, 1999, at 1B.
80. Lisa Arthur, Ethics Panel Clears Sunrise Commissioner, MIAMI HERALD (Broward), June 8, 2000, at 1B.
81. Juan Carlos Rodriguez, Panel Clears Lewis of Ethics Complaints, MIAMI HERALD (Broward), Mar. 16, 2000, at 1B.
82. Steve Harrison, Dania Official Cries Uncle, Says Lawyer has Conflict of Interest, MIAMI HERALD (Broward), Aug. 19, 1999, at 1B.
83. Id.
84. Id.
86. See Charles, supra note 85.
87. Id.
88. Erika Bolstad, Ethics Panel Chooses Officers, MIAMI HERALD (Broward), July 1, 2000, at 3B.
89. Id.
The system may also be abused by individuals filing a flurry of false charges against a candidate. 91

In April 2000, Fort Lauderdale city commissioners adopted a measure prohibiting former city commissioners and former city managerial employees from lobbying the commission within two years of leaving office. 92 Under a different proposal, ex-city officials would also be prevented from lobbying against advisory boards and city staff members. 93 The new proposed rule, however, will not apply to unpaid lobbyists. 94

The Miami-Dade Commission on Ethics and Public Trust made clear in a case that the perception of impropriety comes close to unethical behavior. 95 Several members of the Jackson Memorial Hospital’s board of directors had business dealings with the hospital they regulate. 96 While such business dealings may not amount to a conflict of interest, in the view of an ethics official, it may still be improper. 97 In another case, the Commission ruled that a Miami-Dade commissioner and her husband collected federal rent subsidies from the county housing agency, the same entity the commissioner regulates. 98 Local law bars county employees or members of their immediate families from having a stake in the county’s Section Eight Housing Program. 99 As a result, the ethics commission ordered the commissioner to end the arrangement. 100

B. Public Corruption

A new state task force is reviewing public corruption. 101 Governor Jeb Bush has asked the group to find better ways to crack down on this problem. 102 The group is considering the following proposals: asking state lawmakers for a “strong and clear” anti-public corruption law modeled on

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91. See generally id.
92. Brad Bennett, Proposal Would Make Ex-Officials Wait to Lobby, MIAMI HERALD (Broward), Apr. 19, 2000 at 2B.
93. Id.
94. Ronnie Greene, Hospital Trust Members Face Ethics Scrutiny, MIAMI HERALD (Broward), Oct. 5, 1999, at 10B.
95. Id.
96. Id.
97. Id.
98. Don Finefrock, Dade Commissioner’s Conflicts of Interest Cited, MIAMI HERALD (Broward), Sept. 10, 1999, at 10B.
99. Id.
100. Id.
101. Sue Reisinger, Bush Leads Way in Corruption Fight, MIAMI HERALD (Broward), Oct. 28, 1999, at 1B.
102. Id.
the Federal Hobbs Act—Florida has not had an anti-corruption law since the state’s highest court knocked out key sections in 1978 and 1985.103 The group is also considering more stringent criminal penalties for public corruption, and authorizing the state ethics commission to launch investigations.104 On the agenda is strengthening contracting laws, regulating privatization, lobbying, voter fraud, and campaign financing.105

After three months of proposal development, the group made its recommendations to Governor Jeb Bush and to the state Legislature.106 Proposals included making corruption charges serious felonies rather than misdemeanors, strengthening state ethics commissions, and requiring lawmakers to take ethics classes.107 The most controversial recommendation called for concealing corruption probes that do not lead to criminal charges for three years after the case is closed.108

The 2000 Legislative session ended without action on the task force’s proposals.109 Several high profile corruption cases this past year include a state senator who pleaded guilty to federal charges of Medicare fraud, a former House Speaker who is in prison for income tax evasion, and a county commissioner who was ousted from office by the state attorney’s public corruption unit.110

At the local level, Miami-Dade has developed anti-corruption proposals of its own.111 Some of the recommendations include: increasing county commissioners’ salaries; prohibiting commissioners from voting on matters involving big campaign contributors; setting up a “lifestyle audit” of former elected officials to ensure they have not benefitted illegally; and framing a lobbyist code of ethics, among other things.112

103. Id.
104. Id.
105. Id.
106. Lesley Clark, Task Force Recommends Crackdown on Corruption, MIAMI HERALD (Broward), Dec. 16, 1999, at 11B.
107. Id.
108. Id.
109. Id.
110. Id.; see also Arnold Markowitz, State Attorney in Fight for Police Vote for Reelection, MIAMI HERALD (Broward), Mar. 27, 2000, at 8B.
111. Karen Branch-Brioso, Anti-corruption Group Unveils its Proposals for Miami-Dade, MIAMI HERALD (Broward), June 22, 2000, at 11B.
112. Id. The code is modeled after the Greater Miami Chamber of Commerce Model Code of Business Ethics which requires executives to sign this statement: “We will not, directly or indirectly, offer to give a bribe or otherwise channel kickbacks from contracts awarded, to government officials, their family members or business associates. We will not seek or expect preferential treatment on bids based on our participation in political campaigns.” Id.; see generally MODEL CODE OF BUSINESS ETHICS (2000).
C. Campaign Finance

A bill passed by the State Senate but defeated in the House included a "$5000 limit on 'soft money contributions' to political parties." Miami-Dade's chief public corruption prosecutor sought enactment of an ordinance that would bar individuals doing business with the county from giving money to the election campaigns of county commissioners and the mayor. Earlier, a state grand jury proposed a ban on fund-raising by County Hall lobbyists. But in March 2000, the Miami-Dade County Commission voted seven to four to reject proposed campaign finance reform.

In the past year, the Florida Division of Elections investigated several allegations of violations of campaign finance laws. For example, a Broward County commissioner received more than the $500 limit on contributions from a corporation or individual donor per election cycle; a Broward County commissioner used campaign money for personal expenses and as loans to friends and family; and, another former county commissioner agreed to one year of probation for accepting contributions over the $500 cap and other campaign finance reporting lapses. In another campaign finance case, a losing candidate in a state senate race accused his rival of violating state laws banning contributions five days before an election and requiring candidates to reveal campaign income four days before the election. A Broward County commissioner is contemplating pleading

113. Editorial, Rescue Florida Ethics Package, Senate-Passed Reforms Languish in House, MIAMI HERALD (Broward), May 5, 2000, at 10B.
114. Don Finefrock, Prosecutor Calls for Campaign Reform, MIAMI HERALD (Broward), Feb. 2, 2000, at 11B.
115. Id.
116. Don Finefrock, Miami Officials Reject Campaign Finance Reforms, MIAMI HERALD (Broward), Mar. 10, 2000, at 9B.
117. Charles Savage, Abramowitz Returns Cash to Seven Backers, MIAMI HERALD (Broward), June 23, 2000, at 3B. Violations can result in fines of up to $1000 if committed willfully. Id.
118. Beth Reinhard, Broward Official is Set to Dispute Alleged Violations, MIAMI HERALD (Broward), Dec. 18, 1999, at 3B. State law makes clear that candidates can give back unused money to donors, pay for campaign expenses, or donate it to charity, government agencies, or political parties. Id.
119. Frances Robles, Hardemon Gets Probation for Campaign Violations, MIAMI HERALD (Broward), Mar. 21, 2000, at 8B. In his defense, the former county commissioner estimated that 90% of all candidates make technical violations of campaign finance laws. Id.
120. Karen Branch, Rival Questions Source of Funds for Candidate's 11th-hour Push, MIAMI HERALD (Broward), Dec. 20, 1999, at 8B.
guilty to six misdemeanor election law violations. The commissioner, who faces up to six years in jail, is accused of a number of illegalities including writing campaign checks to imaginary people, then cashing the checks and using the money to buy furniture for his home. The Miami Herald has called for the embattled commissioner’s resignation. Under Florida’s Constitution, “the governor can suspend a public official charged with a felony or for ‘malfeasance, misfeasance, and neglect of duty.’” A former Miami-Dade County commission aide, sentenced to a year of probation after breaking state campaign finance laws, but cleared of federal bribery charges, returned to his former job with back pay.

D. Public Official Misconduct

1. Judges

Operation Court Broom, an extensive Federal Bureau of Investigation and Florida Department of Law Enforcement undercover investigation, wrapped up its work in April 2000 when the last of the judges and attorneys found guilty of corruption were sentenced. All together, three judges, two former judges, six lawyers, and one businessman were convicted. Over the last year, judicial misconduct has included: a Manatee County judge who was accused of orchestrating a trade with another judge so he could preside at a hearing for a driving under the influence case he reported; the Supreme Court of Florida publicly reprimanded a Broward Circuit Court judge for “accepting free Marlins tickets from a law firm that argued cases before him;” the chief judge of Miami’s Third District Court of Appeal was publicly reprimanded by the court for making “rude, sarcastic remarks

121. Beth Reinhard, Cowan Explores a Change of Plea, MIAMI HERALD (Broward), Apr. 29, 2000, at 1B.
122. Id.
123. Editorial, Resign, Scott Cowan: Admissions Reflect Poorly on Broward Politics, MIAMI HERALD (Broward), Apr. 28, 2000, at 10B.
124. Beth Reinhard, Governor Mum on Cowan’s Fate, MIAMI HERALD (Broward), Apr. 1, 2000, at 1B.
125. Don Finefrock, Ex-aide Reinstated Despite Plea, MIAMI HERALD (Broward), June 12, 2000, at 9B.
126. Elaine De Valle, Court Broom Runs its Course, MIAMI HERALD (Broward), Apr. 3, 2000, at 8B.
127. Id.
128. Judge Accused of Ethics Violation, MIAMI HERALD (Broward), Apr. 2, 2000, at 7B.
129. Lesley Clark, Judge Scolded for Taking Freebies From Attorneys, MIAMI HERALD (Broward), June 7, 2000, at 1B.
to two college interns trying a case” in his court;\textsuperscript{130} the Supreme Court of Florida publicly reprimanded a Miami-Dade County judge for behavior “unbecoming a member of the judiciary” during his arrest for soliciting an undercover prostitute;\textsuperscript{131} and Broward’s top judge undertook a review of whether a longtime judge acted improperly when he excused two influential and rich individuals from jury duty.\textsuperscript{132} In one case, a Miami-Dade County judge unsuccessfully requested that the Supreme Court of Florida postpone his public reprimand for conduct “unbecoming a member of the judiciary” until after the November 2000 elections.\textsuperscript{133}

2. City and County Officials

A group of individuals from the Citizens For A Better Miami launched an effort to recall the mayor of Miami.\textsuperscript{134} A former South Miami vice mayor was charged with conspiracy to launder $150,000 in drug money.\textsuperscript{135} A jury found a former Hialeah Gardens mayor guilty of asking a hairdresser and council aide to shoot her husband and to set his car on fire.\textsuperscript{136} Miami’s city manager accused Miami’s mayor of ordering him to investigate four city commissioners and the publisher of the \textit{Miami Herald}.\textsuperscript{137} Fort Lauderdale city officials were cleared of allegations that they destroyed a public record that undermined the city’s position in an employee discrimination claim.\textsuperscript{138} And, Fort Lauderdale’s employees’ union president was cleared of wrongfully withholding dues from the state union.\textsuperscript{139}

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\begin{enumerate}
\item Lesley Clark, \textit{State’s Top Court to Give Scolding to Appeals Judge}, \textit{MIAMI HERALD} (Broward), Mar. 31, 2000, at 10B.
\item Lesley Clark, \textit{State Justices to Reprimand Dade Judge for Misbehavior}, \textit{MIAMI HERALD} (Broward), June 2, 2000, at 7B.
\item Lisa Arthur, \textit{Top Judge to Review VIP Jurors Controversy}, \textit{MIAMI HERALD} (Broward), Dec. 3, 1999, at 1B.
\item Lesley Clark, \textit{Court Won’t Hurry Judge’s Reprimand}, \textit{MIAMI HERALD} (Broward), July 25, 2000, at 9B.
\item Charles Rabin, \textit{Carollo-recall Group Faces Tough Task}, \textit{MIAMI HERALD} (Broward), May 22, 2000, at 7B.
\item David Kidwell, \textit{Informant Testifies Against Former Mayor}, \textit{MIAMI HERALD} (Broward), Mar. 24, 2000, at 6B.
\item Frances Robles, \textit{Ex-Hialeah Gardens Mayor Guilty}, \textit{MIAMI HERALD} (Broward), July 1, 2000, at 7B.
\item Tyler Bridges, \textit{Warshaw Loses Bid to Stay on Job Longer}, \textit{MIAMI HERALD} (Broward), May 5, 2000, at 7B.
\item Brad Bennett, \textit{2 Probes of City Workers Fizzle}, \textit{MIAMI HERALD} (Broward), Nov. 18, 1999, at 8B.
\item \textit{Id.}
\end{enumerate}
\end{small}
3. Fire Officials

Davie’s interim town administrator dismissed the town’s besieged deputy fire chief and is negotiating an early retirement package with the fire chief after reprimanding him for tolerating racist and sexist comments by his deputy. The sanctions came after the town’s firefighter’s union compiled four years of complaints against the two top fire officials. The complaints accused the two of professional incompetence and safety violations, improper sexual and racial comments, and unprofessional behavior. In July 2000, Davie’s town clerk was dismissed after a Davie police probe discovered that she gave the results of the psychological evaluation of a firefighter applicant to her boyfriend, the former deputy fire chief.

4. Police Officials

An internal police investigation report accused Opa-locka’s former police chief of misusing his officers as political henchmen to be set loose against city commission candidates and their supporters, and abusing the civil rights of some citizens. Moreover, the former police chief was accused of retaliating against officers who refused to do his bidding. Miramar’s police captain was terminated more than a year after he was demoted. The ex-captain sued the city, claiming he was demoted for blowing the whistle about how a towing firm had secured the city’s contract unfairly. The ex-captain was replaced by a new chief who faced problems of her own. As previously referred to in the background check discussion of this article, the BSO cleared Miramar’s new police chief of allegations contained in an anonymous letter, claiming that while she was a major with the Miami Police Department, she fired a gun during a domestic dispute with

140. Adam Ramirez, New Davie Town Chief on Hot Seat, MIAMI HERALD (Broward), July 4, 2000, at 1B.
141. Fire Department Probe to End in January, MIAMI HERALD (Broward), Dec. 23, 1999, at 2B.
143. Steve Harrison, Another Official Loses Job in Davie, MIAMI HERALD (Broward), July 21, 2000, at 1B.
144. Ajowa Nzinga Ifateyo, Opa-locka Ex-Police Chief Abused Power, Report Says, MIAMI HERALD (Broward), Dec. 25, 1999, at 7B.
145. Id.
146. City Fires Captain Who Sued Over Demotion, MIAMI HERALD (Broward), Nov. 17, 1999, at 2B.
147. Id.
148. Id.
her former husband. A former Miami police chief's payroll and travel records were subpoenaed by a federal grand jury looking into the looting of a police pension fund.

5. Inspectors: Building, Electrical, and Customs

Public employees must report each time they earn a sum greater than five percent of their annual pay. Technically, however, if each payment is less than five percent of the employee's pay, he or she need not disclose the sum. A Miami-Dade building official, accused of omitting to report $62,000 in unaccounted extra pay, was cleared of felony charges owing to this loophole in financial disclosure laws. Prosecutors were unable to identify the source of the extra pay. The same building official was later accused of altering building records so a woman could install a sliding glass door in her home without following the usual procedure. Removed from his job and indicted last year, the official was ultimately cleared of all wrongdoing. A former Cooper City building department director was sentenced to twenty-seven months in prison and a $5000 fine for conspiring to extort $10,000 from a residential contractor. In essence, the building official was shaking down the home builder for cash as quid pro quo for foregoing inspections.

A Pembroke Pines electrical inspector was suspended for five days without pay for neglecting to follow through on an inspection and for looking the other way at building violations at another site. Earlier, another Pembroke Pines building inspector had resigned over claims that he

149. David D'Addio, Probe of Miramar Police Chief Over, MIAMI HERALD (Broward), Aug. 11, 1999, at 8B; see discussion supra Part II.E.
150. Manny Garcia, Warshaw's Records are Subpoenaed, MIAMI HERALD (Broward), June 23, 2000, at 7B.
151. Frances Robles, Case Against Building Official Unravels, MIAMI HERALD (Broward), Aug. 11, 1999, at 9B.
152. Id.
153. Id.
154. Id.
155. Don Finefrock, Former Building Official Cleared of Wrongdoing, MIAMI HERALD (Broward), Dec. 23, 1999, at 7B.
156. Id.
157. Paul Brinkley-Rogers, Building Chief Gets 27 Months for Extortion, MIAMI HERALD (Broward), Aug. 28, 1999, at 1B.
158. Id.
159. Elena Cabral, Electrical Inspector in Pines Suspended, MIAMI HERALD (Broward), Apr. 3, 2000, at 3B.
was loafing on the job. As a consequence, the city manager ordered the city’s fire department to investigate such inaction in the building division.

A veteran customs inspector was dismissed for marking an unopened box of cargo as if he had inspected it and denied the charge when confronted. It turned out there were six pounds of cocaine inside the box. A wide-ranging newspaper review of the United States Customs Service in Miami found “how careers have flourished at Customs after such transgressions as tampering with evidence, soliciting prostitutes in Customs cars, soliciting underage boys for sex, dating drug smugglers, falsifying timecards, lying on job applications, burglary, theft and sexual harassment.” The new chief of the United States Customs Service, brought in to redress wrongdoing at the agency, has himself been accused of dismissing whistleblowers along with cleaning house.

6. Legislators

In the past year, state lawmakers have also come under criticism in a number of cases. For example, Florida TaxWatch, a taxpayer advocacy group, has criticized state and local public officials for billing taxpayers for their personal travel and entertainment. In other cases, lawmakers have been accused of a wide range of wrongdoing: a Central Florida state representative apologized to the House for commenting that a former speaker’s official House portrait “should be hanging in a post office, not on the walls of the hallowed chamber, because he’s a convicted felon”; a Fort Lauderdale state senator was reprimanded by the senate president for missing forty-nine roll call votes on five of the twelve days the senate had been in session; and a former state senator was sentenced to five years in federal prison for Medicare fraud committed while he served as chair of the

160. Id.
161. Id.
163. Id.
164. Id.
165. Editorial, *Reform in U.S. Customs Service?*, MIAMI HERALD (Broward), Dec. 4, 1999, at 12B.
166. Caroline J. Keough, *Politicians: Travel Vital, Necessary to Job*, MIAMI HERALD (Broward), Dec. 12, 1999, at 1B.
167. Lesley Clark, *Legislator's Dig at Imprisoned Speaker Creates Sparks*, MIAMI HERALD (Broward), Mar. 10, 2000, at 10B.
168. Steve Bousquet, *Broward Lawmaker Chastised*, MIAMI HERALD (Broward), Apr. 7, 2000, at 1B.
Senate Criminal Justice Committee. In addition, the former senator was fined $50,000, ordered to pay $98,174 restitution to Medicare, and to make honest financial disclosures after he leaves prison. An editorial in the Miami Herald criticized the practice of politicians doubling as public school officials. As a result of these dual roles, these politicians/employees are absent multiple days each year from their taxpayer-paid job without ever having their pay reflect such rampant absenteeism.

7. Prison Chief

Florida’s corrections chief came under fire from the state legislature. One state lawmaker, a member of the committee that regulates the prison system, accused the corrections chief of failing to put up video cameras to catch wrongdoing within the prisons. The legislature controls the prison system’s budget and pay raises for prison guards. Later, legislators from both parties alleged that the state prisons chief had “muzzled” his employees to keep them from talking about the decision by the Department of Corrections to close a North Florida prison without conferring with lawmakers. Moreover, an angry lawmaker complained to Governor Jeb Bush about the job performance of the number two man at the embattled Department of Corrections.

8. Teacher’s Duty to Report Suspected Cases of Child Abuse

A state law that took effect July 1, 1999, requires teachers, doctors, and judges to report suspected cases of child abuse to the Department of Children and Family Services’ abuse hot line. As a result of this new law,

169. David Kidwell, Ex-Senator Gutman Gets 5 Years for Fraud, MIAMI HERALD (Broward), Apr. 29, 2000, at 10B.
170. Id.
171. Editorial, When Educators Are Also Politicians, MIAMI HERALD (Broward), Nov. 16, 1999, at 14B.
172. Id.
173. Lesley Clark, Lawmaker Blasts Corrections Chief, MIAMI HERALD (Broward), Aug. 14, 1999, at 13B.
174. Id.
175. Id.
176. Lesley Clark, Legislators from Both Parties Criticize State Prisons Chief, MIAMI HERALD (Broward), Dec. 8, 1999, at 1B.
177. Lesley Clark, Legislator Complains About Deputy Prison Secretary, MIAMI HERALD (Broward), Nov. 17, 1999, at 13B.
178. FLA. STAT. § 39.201 (2000) (this statute is known as the “Kayla McKean Act”).
thousands of alleged cases of child abuse have swamped a state system that is already overloaded.179

IV. TERMS OF EMPLOYMENT

A. Wages and Hours

The Bureau of Labor Statistics reported that women earned 76.5 cents for every dollar men earned last year doing the same full-time work.180 Since 1979, women have closed the pay gap by 14 cents.181 In 1999, African-American and Hispanic women earned 64.1 and 54.5 cents respectively for every dollar earned by white men.182 A bill introduced in April 2000 would require employers of fifteen or more people to document that employees who do equal work receive equal pay.183 The Department of Labor would serve as the depository for such records and employees would be entitled to sue employers who failed to keep such records or turn over annual statements identifying how their salary was computed.184 Lobbyists for business owners, however, helped defeat the senate bill.185 Another bill passed a Senate Committee in April 2000 that would entitle abused women who are afraid that their husbands or boyfriends will hurt them at work to resign and still be eligible for state unemployment benefits.186

In Hundertmark v. Florida Department of Transportation,187 the Eleventh Circuit ruled that Congress had the power, under section 5 of the Fourteenth Amendment, to extend the protections of the Equal Pay Act188 to the states.189 In essence, Congress constitutionally abrogated states’

179. Shari Rudavsky & Amy Driscoll, Calls Pour in to Florida’s Child Abuse Line, MIAMI HERALD (Broward), Nov. 23, 1999, at 1A.
180. Pay Disparity Between Sexes Persists, MIAMI HERALD (Broward), May 30, 2000, at 11B. But see Matthew Barakat, Study: Women Narrow Pay Gap, MIAMI HERALD (Broward), July 4, 2000, at 1C (a survey by Working Woman magazine found that women’s salaries equal and even exceed men’s salaries in some occupations such as advertising CEO’s).
181. See Pay Disparity Between Sexes Persists, supra note 180.
182. Id.
183. Beth Reinhard, Equal-pay Bill Defeated in Committee, MIAMI HERALD (Broward), Apr. 5, 2000, at 6B.
184. Id.
185. Id.
186. Beth Reinhard, Jobless Benefits Sought for Abused Women, MIAMI HERALD (Broward), Apr. 5, 2000, at 6B.
187. 205 F.3d 1272 (11th Cir. 2000).
189. Hundertmark, 205 F.3d at 1274.
sovereign immunity so that the Eleventh Amendment does not bar suits against the State of Florida in federal court.\footnote{190}

Teachers’ salaries were much in the news during 1999–2000. At the state level, teachers won an eight percent increase in salaries in the Senate’s final budget and also the possibility of huge cash bonuses to keep and recruit teachers in low-performing schools.\footnote{191} In September 1999, the State Commissioner of Education unveiled an incentive plan for Florida teachers under which the best public school teachers could hike up their salaries by fifty percent—to $80,000 a year.\footnote{192} The proposed salary incentive plan aims both at rewarding teachers based on student performance and at remedying the statewide teacher shortage.\footnote{193} Over 500 teachers statewide earned certification from the National Board for Professional Teaching Standards in the 1998–1999 academic year.\footnote{194} Certification increased those teachers’ “annual income by as much as $9000 per year.”\footnote{195} Teacher certification is akin to preparing for a bar exam.\footnote{196} Fewer than half the applicants succeed the first time. The process includes having teachers’ classroom performance videotaped and scrutinized.\footnote{197} At the local level, the Broward School District and union officials reached agreement on a two-year teacher contract that secures a 4.5% increase in 1999 and an average 3.7% raise in 2000–2001.\footnote{198} A proposed agreement would make Miami-Dade’s first time teachers the highest paid in the state, would increase salaries 5.35%, and would entitle teachers to speak more freely about school matters.\footnote{199}
The Hollywood City Commission announced that construction companies that secure building contracts over $500,000 with the city must pay fair wages to its employees, no less than the prevailing rate of wages and fringe benefits set by the federal government.200 Besides Hollywood, Broward County, Sunrise, and Dania Beach have modeled their "prevailing wages" law on the Davis-Bacon Act,201 a federal law aimed at setting minimum wages that contractors with the federal government must pay to their workers.202

Governor Jeb Bush was sued by the public union that represents the state's 20,000 probation and corrections officers, alleging that the state legislature reneged on the governor's promise to increase officers' pay five percent, receiving, instead, only half of that sum recommended by the governor.203 The state legislature is considering the largest overall pay increase for about 4000 state police officers in ten public agencies.204 Despite the $51 billion budget passed in May 2000, the largest in Florida's history, tens of thousands of the lowest-paid state employees received the smallest raise in three years—two and a half percent.205 By contrast, police officers and teachers received eight percent raises.206 The state's chief prison boss was roundly criticized in October 1999 for raising mid-level managers' salaries by as much as seventy percent in one case.207

Several public officials have gone to court over the amount of severance pay they think they are entitled to.208 The former head of Broward's Housing Authority, who lost his job after he was convicted in 1996 for income tax fraud, will also lose about $157,000 in severance pay for the eighteen months left on his contract.209

200. Pedro Acevedo, New Hollywood Law Requires Contractors to Pay Fair Wages, MIAMI HERALD (Broward), Sept. 23, 1999, at 8B.
202. See Acevedo, supra note 200.
203. Phil Long, Probation, Corrections Union Sues Bush, MIAMI HERALD (Broward), June 25, 2000, at 6B.
204. Phil Long, Officers May Get Pay Raise, MIAMI HERALD (Broward), Jan. 23, 2000, at 6B.
205. Phil Long, Lowest-paid State Employees Receive the Smallest Raises, MIAMI HERALD (Broward), May 5, 2000, at 8B.
206. Id.
207. Steve Bousquet & Lesley Clark, Top Prison Boss Battles Tide of Criticism, MIAMI HERALD, Oct. 18, 1999, at 1B.
208. Beth Reinhard, Imprisoned Housing Chief Won't Get Pay, MIAMI HERALD (Broward), Sept. 4, 1999, at 1B.
209. Id.
B. Regulation of Dress and Grooming

The Broward County School District decided to crack down on casual wear by school personnel during summer sessions. At bottom, employees were told to dress in a professional manner. Beach or sportswear, sun dresses, slip-ons, tank tops, T-shirts, flip flops, and sandals were deemed inappropriate attire while lightweight summer suits, jackets, stockings, and ties pass muster.

C. Benefits

1. Jury Duty Release

A county judge ruled that Broward County public school teachers who are prepping students for the Florida College Aptitude Test and other key tests may be excused from serving on juries. As Broward County's School Superintendent noted, "teachers are really needed in the classroom." Other public employees who by law are excused from jury duty are Governor Jeb Bush and his cabinet, judges, their clerks, and law enforcement officers.

2. Domestic Partner Benefits

Last year, Broward County enacted a domestic partners ordinance, that, among other benefits, entitled the unmarried partner of county employees to be treated the same as any spouse of a county employee. Opponents of the measure, defeated at the ballot box and in a series of court battles testing the ordinance's constitutionality, tried again to get the measure repealed. This time the case is before the Fourth District Court of Appeal in West Palm Beach.

210. Daniel de Vise, Summer Fashion Police Strike, MIAMI HERALD (Broward), Aug. 10, 1999, at 3B.
211. Id.
212. Id.
213. Daniel de Vise, County Teachers With Excuse Can Skip Jury Duty, MIAMI HERALD (Broward), Mar. 23, 2000, at 3B.
214. Id.
215. Id.
216. Id.
217. Jacqueline Charles, Foes of Domestic-Partners Law Back in Court, MIAMI HERALD (Broward), Feb. 24, 2000, at 3B.
218. Id.
of sexual orientation in housing, employment, and public accommodations also faces repeal efforts by the Christian Coalition and its supporters. If opponents of the gay-rights ordinance garner four percent of the county voters' signatures, the issue would be placed on a countywide ballot. The same group has lost twice in efforts to overturn Tampa, Florida's gay rights ordinance, but won in Alachua County in 1994.

3. Family Medical Leave Act

Under the Family and Medical Leave Act ("FMLA"), public employees may take up to twelve weeks of unpaid leave in a twelve month period when faced with family medical problems. President Clinton has proposed allowing states the option of granting unemployment insurance benefits for new parents. This initiative, wholly voluntary, would allow states to subsidize a leave following the birth or adoption of a child. While Vermont, Maryland, and Washington are considering legislation to extend unemployment benefits to parental leave, Florida has not. The national Chamber of Commerce, however, has sought to enjoin the Labor Department from promulgating regulations that would execute Clinton's proposal. In California, meanwhile, Governor Gray Davis vetoed a measure aimed at expanding that state's family care and medical leave act to allow employees time off to care for ill siblings, adult children, grandparents, or domestic partners. The Clinton administration has also proposed extending the FMLA to many small businesses, but many Floridians are opposed to this measure, including the editorial board of the Miami Herald. In O'Connor v. PCA Family Health Plan, the Eleventh Circuit addressed the circumstances under which an employer may deny an employee the right to

219. Don Finefrock, Struggle Over Gay-Rights Ordinance Drawing Near, MIAMI HERALD (Broward), Feb. 3, 2000, at 13B.
220. Id.
221. Id.
224. Id.
225. Id.
226. Id.
228. Gov. Davis Vetoes Bill to Expand Family Leave, N.Y. TIMES (Nat'l ed.), May 25, 2000, at 24A.
229. Editorial, Family Leave Act Needs Fine Tuning, MIAMI HERALD (Broward), Feb. 8, 1999, at 10A.
230. 200 F.3d 1349 (11th Cir. 2000).
reinstatement upon return from FMLA leave. As a matter of first impression, the court ruled that the employer has the opportunity to prove it would have dismissed the employee on FMLA leave, even had she not been on leave.

4. Vacation, Sick Pay, and Teacher Absenteeism

A former mayor of Plantation ended up reimbursing the city $38,000 he received for unused vacation and sick pay in the 1990s. Earlier, the city council ruled that the city charter classifies the mayor as a public official and not a city employee. For this reason, he was ineligible for vacation and sick leave benefits.

A study undertaken by the Miami Herald revealed that “the average Broward County student spent twenty-two days of the past school year under the tutelage of an educational temp.” The typical Broward County teacher was absent eighteen days in 1999. Teacher absenteeism has risen eighteen percent in Broward County in the last four years. Some cite the FMLA for the increase in teacher absenteeism. High rates of teacher absenteeism also exist in Miami-Dade public schools. Miami-Dade County Public Schools has also drawn criticism for paying local politicians for roles in which they did not always have to do anything. One politician missed 121 days of work as a social worker but was paid a $61,112 salary.

231. Id. at 1353.
232. Id. at 1353-54.
233. William McGee, Plantation Ex-Mayor Pays Back $38,442, MIAMI HERALD (Broward), Aug. 10, 1999, at 1B.
234. Id.
235. Id.
236. Daniel de Vise, Broward Teacher Absences on Rise, MIAMI HERALD (Broward), Nov. 14, 1999, at 1A.
237. Id.
238. Id.
239. Id.
240. Editorial, Find What’s Ailing Teachers, MIAMI HERALD (Broward), Nov. 16, 1999, at 14B.
241. Analisa Nazareno, Legislators Draw Criticism for Absences in School Roles, MIAMI HERALD (Broward), Nov. 15, 1999, at 8B.
242. Id.
5. Health Benefits

a. Mental Health Benefits

Under the 1996 Mental Health Parity Act, group health plans may not set annual or lifetime dollar limits on an employee’s mental health care below the amount for general medical and surgical services.243 However, a congressional investigation has found that thousands of employers are violating the federal law by providing lower mental illness coverage than for physical illness.244 A new study found that the government receives more disability-act complaints from employees with emotional or psychiatric problems than from employees with any other type of ailment.245

b. Prescription Drug Benefits

A proposal by Governor Jeb Bush and some lawmakers, that would have reduced the state’s spending on prescription drugs for its 97,000 employees, was withdrawn last year after testimony that complained of hardships if the measure were enacted.246 The repealed plan would have provided doctors with a list of state approved prescription drugs.247 A similar proposal involving Medicare drug limits for poor people is also being considered by the legislature.248

c. Health Benefits for Disabled Workers

A new federal law expanding Medicaid and Medicare will enable disabled individuals to return to work without losing their health insurance benefits.249 The new law has been heralded as the most important development for the disabled since the Americans with Disabilities Act (“ADA”) became law in 1990.250 This law may especially help

244. Id.
247. Id.
248. Id.
250. Id.
asymptomatic HIV positive individuals by allowing Medicaid to help pay for powerful drugs that inhibit the virus, thereby allowing infected individuals to continue working.\textsuperscript{251}

d. \textit{Costs of Health Insurance}

Miramar city employees saw their health insurance rates rise more than eleven percent under an agreement brokered by Miramar commissioners with HIP Health Plan.\textsuperscript{252} At the same time, benefits will remain the same.\textsuperscript{253}

e. \textit{Health Insurance Fraud}

The head of Hollywood's employee health-care plan was accused of lying to city commissioners and neglecting to alert officials that a key health care contract was about to expire.\textsuperscript{254} The city risk manager, who runs a $14 million self-insurance fund, is also accused of overstepping his authority by making decisions about the plan without consulting superiors.\textsuperscript{255} The official is on paid leave pending resolution of outstanding claims.\textsuperscript{256} Soon after the story broke, the employee health care plan administrator was dismissed.\textsuperscript{257} Three months later, three City of Hollywood employees claimed they were victims of retaliation and discrimination over testimony they gave in a police investigation into whether unauthorized health benefits were given to city employees and dependents.\textsuperscript{258}

f. \textit{Public Employee Health}

In other health and safety matters, the Miami-Dade School Board was sued after a ten-year-old became ill with tuberculosis, allegedly contracted

\begin{itemize}
\item \textsuperscript{251} \textit{Id.}
\item \textsuperscript{252} David D'Addio, \textit{Miramar Employees to See Increase in Insurance Payments}, \textit{MIAMI HERALD} (Broward), Aug. 19, 1999, at 3B.
\item \textsuperscript{253} \textit{Id.}
\item \textsuperscript{254} Neil Reisner, \textit{City Lists Claims Against Manager}, \textit{MIAMI HERALD} (Broward), Mar. 22, 2000, at 1B.
\item \textsuperscript{255} \textit{Id.}
\item \textsuperscript{256} \textit{Id.}
\item \textsuperscript{257} Neil Reisner & Wanda Demarzo, \textit{Health Plan Boss Fired}, \textit{MIAMI HERALD} (Broward), Mar. 24, 2000, at 1B.
\item \textsuperscript{258} Wanda J. DeMarzo, \textit{Health Benefits Scandal Broadens}, \textit{MIAMI HERALD} (Broward), June 28, 2000, at 1B.
\end{itemize}
As a result, a school board member tried unsuccessfully to make tuberculosis testing for school employees mandatory. In March 2000, union organizers throughout Florida protested further budget cuts in worker safety programs in the state Department of Labor and Employment Security. Studies indicate the number of employee deaths is on the rise in Florida, unlike the trend in the rest of the country. A bill was introduced in the state Senate that would make it a felony for an inmate to fling bodily fluids at a corrections officer, potentially exposing guards to serious health risks, including the AIDS virus.

6. Public Pensions

a. Public Pension Legislation

Under new legislation, state employees' pensions now vest in six years instead of ten while state employees' insurance rates stay the same. Surpluses in the state's $77 billion retirement fund led lawmakers to reduce annual contributions and improve benefits for the more than 600,000 public employees in Florida. Moreover, calculating pension benefits is changing from a "high-five," the best in five years of earnings, to a "high-three" system. The pension plan overhaul will allocate over $3 billion of the plan's $9 billion surplus to sweeten benefits while cutting premiums paid by state, counties, cities, school districts and law enforcement agencies. Pension reform came over the protests of Governor Jeb Bush who wanted lawmakers to include a reserve fund before tapping into the pension plan.

259. Jay Weaver, *Suit: Girl Got TB From School Worker*, MIAMI HERALD (Broward), Mar. 15, 2000, at 11B.
260. Id.
262. Id.
263. Steve Bousquet, *Senate Acts to Protect Prison Guards*, MIAMI HERALD (Broward), Apr. 7, 2000, at 1B; see also S. 88, 2000 Leg. (Fla. 2000).
264. Phil Long, *Lowest-paid State Employees Receive the Smallest Raises*, MIAMI HERALD (Broward), May 5, 2000, at 8B.
265. Steve Bousquet, *Robust Economy Fuels Call for Pension Overhaul*, MIAMI HERALD (Broward), Apr. 19, 2000, at 7B.
266. Id.
267. Steve Bousquet, *Senate Approves Pension Plan Hike*, MIAMI HERALD (Broward), Apr. 12, 2000, at 11B.
In addition, the Governor recommended restoring lost pension credits to police and firefighters.

Surpluses in the public pension fund owe much to the stock market where Florida invests its pension funds in a wide array of investments, including private equity funds and real estate. Public pension fund profits from stock market investments have been rising more than eight percent a year.

Just as President George W. Bush has proposed partial privatization of Social Security, his brother, Governor Jeb Bush, has proposed privatizing the state public pension fund. In fact, the director of Florida's retirement system was replaced, in light of his opposition to Bush's privatization proposal. Under Bush's plan, public employees would be given the option of managing their own retirement accounts by 2002 and making pensions portable, i.e., movable from job to job, and in and out of government. The proposal essentially converts the traditionally defined benefit public pension scheme into a so-called defined contribution system.

b. **Severance Pay and Rules Against Double Dipping**

In May 2000, the Plantation City Council enacted an ordinance aimed at barring former elected officials, who subsequently re-enter public office, from receiving retirement benefits and salary simultaneously.

A recurring issue over the granting of severance pay to public officials who resign under a legal cloud came to the forefront when the executive director of Miami's agency that regulates Bayfront Park, under investigation

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268. *Governor Stands Firm on Retirement Fund*, MIAMI HERALD (Broward), Apr. 14, 2000, at 13B.

269. Steve Bousquet, *In Pension Battle, Law Officials Win*, MIAMI HERALD (Broward), Apr. 20, 2000, at 9B.

270. Steve Bousquet, *Pension Profits Tempt Lawmakers*, MIAMI HERALD (Broward), Mar. 17, 2000, at 9B.

271. *Id*.


273. Steve Bousquet, *State Pension Fund Director Ousted, Opposed System's Privatization*, MIAMI HERALD (Broward), May 25, 2000, at 9B.

274. *Id*.

275. *Id*.

276. Robyn Meadows, *Plantation City Council: Officials May Take Salary or Retirement Pay, Not Both*, MIAMI HERALD (Broward), May 4, 2000, at 7B.
for alleged misspending, agreed to resign in exchange for a $20,000 severance package. 277

c. Widow's Annuity

The surviving widow of the public school teacher killed by one of his students has agreed not to sue the Palm Beach County School Board in exchange for a $245,000 annuity. 278 The annuity will provide a source of income equal to the amount the widow's wife would have earned until her retirement at sixty-two years of age. 279 The settlement is in addition to life insurance proceeds and worker's compensation benefits due to the widow. 280

d. SEC Regulation of Political Contributions to Public Pensions

The Securities and Exchange Commission has proposed a rule, G-37, aimed at limiting political contributions to individuals who run public pension funds in an effort to combat a practice known as pay-to-play in the municipal finance arena. 281 The proposed rule prohibits a firm from soliciting asset management contracts for two years after it or its members make a political contribution. 282 Moreover, firms may not contribute over $250 to state and local officials with authority to grant government contracts. 283 Rule G-37 has been criticized on First Amendment grounds, specifically, the right to make and solicit political contributions, but the Supreme Court rejected a challenge to the rule. 284

e. Public Pension Plan Misconduct

Miami's city manager was accused of using his police pension fund credit card to purchase $16,775 worth of hockey tickets. 285 Calling it an

277. Tyler Bridges, Park Trust Chief to Get Big Severance, MIAMI HERALD (Broward), Feb. 15, 2000, at 7B.
278. The Associated Press, Widow Takes Annuity Over Teacher's Slaying, MIAMI HERALD (Broward), June 23, 2000, at 9B.
279. Id.
280. Id.
282. Id.
283. Id.
284. Id.
285. Manny Garcia & Tom Dubocz, Accountant, Not Warshaw, Wrote Check to Police Fund, MIAMI HERALD (Broward), Sept. 3, 1999, at 9B.
innocent mistake, he later reimbursed the pension fund for the cost of the six Panthers season tickets.\(^ {286} \) It turns out, however, that an accountant, who seemingly committed suicide over claims that he looted the pension fund, reimbursed the $500,000 he allegedly took from the fund.\(^ {287} \)

f. **New State Public Pension Board Regulations**

A recent change in Florida law forces cities to create separate public pension boards: one for police officers and one for fire rescue employees.\(^ {288} \) As a result of this change in the law, cities like Tamarac are restructuring their pension boards.\(^ {289} \) Also, a 1997 state law imposed new reporting and paperwork requirements on city police and fire pension boards.\(^ {290} \) Failure to comply, as the Town of Davie found out, can result in the state withholding its contributions to the town’s police and fire pension boards.\(^ {291} \)

g. **Supreme Court Ruling Affecting Public Pensions**

In *Crosby v. National Foreign Trade Council*,\(^ {292} \) the Supreme Court unanimously struck down a Massachusetts law boycotting companies that do business in Myanmar owing to that Asian country’s repressive military government.\(^ {293} \) The Court made clear, however, that under the Supremacy Clause of the Constitution, Congress has exclusive power to regulate foreign policy, and the state law stood in the way of Congress’ diplomatic aims.\(^ {294} \) Yet, a state might achieve roughly the same outcome, the Court said, through seeking divestment by public pension funds of the stock of companies that do business in Myanmar.\(^ {295} \)

\(^{286}\) *Id.*

\(^{287}\) Manny Garcia & Tom Dubocq, *Feds Probe Books of Group Once Run by Warshaw*, *MIAMI HERALD* (Broward), Sept. 19, 1999, at 3B.

\(^{288}\) See *FLA. STAT.* § 175.041 (2000).

\(^{289}\) Jeremy Milarsky, *Pension Boards Seek New Members in City*, *SUN SENTINEL* (Broward), Nov. 28, 1999, at CP19.

\(^{290}\) Marianne M. Armshaw, *Davie Pension Funds in Question*, *MIAMI HERALD* (Broward), Oct. 9, 1999, at 3B.

\(^{291}\) *Id.*

\(^{292}\) 120 S. Ct. 2288 (2000).

\(^{293}\) *Id.* at 2290–91.

\(^{294}\) *Id.* at 2293–94.

h. **Suits for Back Pension Benefits**

A ten-year City of Hollywood employee, who was told he was not entitled to pension benefits at age fifty-five, but must wait until age sixty-two, sued the city for back pension benefits. A state circuit court ruled in the employee's favor and an appellate court affirmed the lower court's decision. Earlier, five other former Hollywood employees sued the city for back pension benefits and the city ended up owing $78,000 in legal fees and $500,000 in back pension benefits to the employees.

7. Unemployment Compensation Benefits

As part of its tax relief program, the 1999 Legislature approved, for the second year in a row, a reduction of one-half percent of the unemployment compensation tax that most employers pay, costing the unemployment fund $187 million. The Legislature also approved an increase in unemployment compensation benefits for people out of work.

D. **Privacy**

1. Drug Testing

Fewer employees are using illicit drugs in the workplace, except at medium-sized firms, according to a new study by the federal Substance Abuse and Mental Health Services Administration.

Relying on the Fourth Amendment's ban on government searches absent probable cause, a United States District Judge overturned the City of Hollywood's practice of testing all prospective employees in April 2000. To warrant drug testing, the court held, the city needs to prove a "special

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297. Id.

298. Id.

299. Mark Silva, *Legislature Ready to Approve $1 Billion in Tax Cuts*, MIAMI HERALD (Broward), Apr. 16, 1999, at 1A.

300. Id.

301. Mike Hudson, *Mixed Results on Workplace Drug Use*, MIAMI HERALD (Broward), Sept. 9, 1999, at 3C.

need" such as safety. Presumably, those applying for jobs as police officers, firefighters, and arguably even public school teachers, might fall within this "special need" category. The city's drug testing policy, the judge ruled, was "overbroad because it applies to applicants of all positions with the City of Hollywood, without regard to the particular job classification/duties involved, or distinguishing between jobs that are safety sensitive and those that are not." The ruling will likely lead many Florida cities that currently have drug testing in place to review their practices. For example, Fort Lauderdale and Pembroke Pines have drug testing for all of their city workers as well as the Broward County School Board.

2. Financial Disclosures by Public Officials

Many public officials are required by law to file income statements as part of the job. Some nominees for public office think this is too high a price to pay. For example, an appointee to the Property Advisory Board of Coral Gables turned down the appointment, finding the financial disclosure requirement an unreasonable intrusion into his private life.

3. Surveillance of Public Employees' Private Lives

The Florida Department of Law Enforcement disclosed that a private investigator hired by an insurance firm followed a Department of Insurance employee in an effort to find out embarrassing information that would force the Insurance Commissioner to fire the employee who happens to be the state official charged with overseeing the Joint Underwriting Association. The insurance company that hired the private eye was upset over losing a $16 million contract. The public employee was followed to a gay bar, had his friends investigated, and had his bank account and telephone records

303. Id.
305. Id.
306. See Harrison, supra note 302.
307. Id.
308. Id.
309. Nick F. De Martino, letter to the editor, Appointment Has a Disturbing Price, MIAMI HERALD (Broward), Feb. 19, 2000, at 13B.
310. Id.
311. Id.
312. Lucy Morgan, Bankers Insurance Forced to Disclose Secret Records, MIAMI HERALD (Broward), Sept. 3, 1999, at 1C.
313. Id.
The state employee sued the insurance company for invasion of privacy.\textsuperscript{315}

4. Gag Orders

A group of Miami-Dade narcotics detectives and their supervisor, accused of confiscating drugs illegally, asked a court to keep their pictures out of the media, including newspaper and television.\textsuperscript{316} In defense of their petition, the officers claim their lives are at risk after their booking photos and addresses were released to the media.\textsuperscript{317} Under state law, police officers' personal addresses are exempt from public records laws.\textsuperscript{318} The \textit{Miami Herald} claimed a First Amendment right to publish the officers' pictures.\textsuperscript{319} The judge ordered the officers' home addresses and Social Security numbers be omitted from their court files and enjoined the media from broadcasting the officers' pictures.\textsuperscript{320} In a similar matter, an attorney for four guards accused in the beating death of a death row inmate asked for an emergency court order to prevent the release of fourteen boxes of reports, pictures, and transcripts.\textsuperscript{321} The attorney argued that the four guards could not get a fair trial if the contents of the boxes were released to the news media.\textsuperscript{322}

A former Hollywood police chief sued the police officers' union, claiming, among other things, that the union: "engaged in a public records witch hunt" by applying for the ex-chief's confidential psychological test results, e-mail messages, and cell phone records.\textsuperscript{323} In another invasion of privacy case involving public employment, a former Broward County School Board candidate and part-time teacher recovered $850,000 in damages against the school district for disclosing his confidential psychological records.\textsuperscript{324}

\textsuperscript{314.} Id.

\textsuperscript{315.} Id.

\textsuperscript{316.} Frances Robles, \textit{Officers Want Limit on Publicity}, \textit{MIAMI HERALD} (Broward), Sept. 8, 1999, at 10B.

\textsuperscript{317.} Id.

\textsuperscript{318.} Id.

\textsuperscript{319.} Id.

\textsuperscript{320.} Id.

\textsuperscript{321.} Phil Long, \textit{Guard Wants Prison-Death Files Sealed}, \textit{MIAMI HERALD} (Broward), July 20, 2000, at 9B.

\textsuperscript{322.} Id.

\textsuperscript{323.} Caroline Keough & Wanda De Marzo, \textit{Ex-Chief Sues Police Union}, \textit{MIAMI HERALD} (Broward), Apr. 14, 2000, at 1B.

\textsuperscript{324.} Beth Reinhard, \textit{Bills Seek More Cash for Plaintiff}, \textit{MIAMI HERALD} (Broward), Dec. 1, 1999, at 3B.
However, a public employee cannot recover more than $100,000 from the district unless the Florida legislature agrees. 325

V. DISCIPLINE AND DISCHARGE

A. Off-Duty Misconduct

In the past year, public employees have been arrested for misconduct committed while away from the workplace. Offenses ranged from: drug possession; 326 traffic offenses; 327 credit card theft; 328 tax fraud; 329 insurance fraud; 330 selling stolen property; 331 moonlighting; 332 guns; 333 fighting; 334

325. Id.
326. David Green, Sheriff’s Deputy Among 8 Men Accused of Running Drug Ring, MIAMI HERALD (Broward), June 17, 2000, at 1B; David Green, BSO Deputy Arrested in Drug Sting, MIAMI HERALD (Broward), Mar. 22, 2000, at 8B; Steve Bousquet, State Prison Guard Fired After Arrest in Drug Sting, MIAMI HERALD (Broward), Sept. 25, 1999, at 11B; Arnold Markowitz, Miami Police are Charged in Drug Case, MIAMI HERALD (Broward), Oct. 29, 1999, at 10B; Sabrina Walters, Dade Teacher’s Drug Arrest Latest in Recent Trend, MIAMI HERALD (Broward), Aug. 31, 1999, at 10B; David Kidwell, Broward Deputy Among 58 Held in 2-year Sting, MIAMI HERALD (Broward), Aug. 26, 1999, at 1A; Adam Ramirez & Wanda DeMarzo, Dana Mom: Teacher Gave Son Drugs, Booze, MIAMI HERALD (Broward), Aug. 25, 1999, at 1B.
328. Brad Bennett, Officer Charged in Credit Card Theft, MIAMI HERALD (Broward), Apr. 22, 2000, at 1A; Joan Fleischman, If the Shoe Fits, MIAMI HERALD (Broward), Dec. 22, 1999, at 4A (clerk for City of Miami, moonlighting as cashier, caught putting money in her shoe).
329. Wanda J. DeMarzo & Lisa Arthur, Firefighters Refused to Pay Taxes for Years, MIAMI HERALD (Broward), Feb. 9, 2000, at 1B.
330. Arnold Markowitz, Public Workers Hauled Off to Jail for $300,000 Insurance Scam, MIAMI HERALD (Broward), Feb. 9, 2000, at 12B.
331. Manolo Barco, Arrested with Stolen Phones, Cop Fired, MIAMI HERALD (Broward), Dec. 18, 1999, at 2B.
332. Arnold Markowitz, Moonlighting Cops in Jam for Working at Club, MIAMI HERALD (Broward), Aug. 30, 1999, at 6B.
333. Arnold Markowitz, Weapons Purchase Gets DOT Officers Fired, MIAMI HERALD (Broward), June 5, 2000, at 8B; Wanda J. DeMarzo, Jail Guard Charged with Pulling Gun on Driver in Crash, MIAMI HERALD (Broward), Nov. 24, 1999, at 3B.
334. Sara Olkon, Bar Brawl May Cost Officer His Job, MIAMI HERALD (Broward), Sept. 4, 1999, at 11B.
engaging in consensual sex at a sex club;\textsuperscript{335} sex with a minor;\textsuperscript{336} touching a male police officer's private parts;\textsuperscript{337} meeting in a hotel for sex during working hours;\textsuperscript{339} and soliciting an undercover officer.\textsuperscript{340}

B. \textit{On-the-Job Misconduct}

In the past year, public employees have been disciplined for the following on-the-job categories of misconduct.

\begin{enumerate}
\item 335. Beth Reinhard \& Daniel de Vise, \textit{Teachers in Sex Club Raid Suspended}, \textit{MIAMI HERALD} (Broward), Aug. 4, 1999, at 1B. Subsequently, however, the public school teachers' pay was restored, enabling them to go back to work somewhere in the 201-school Broward district—though probably not as teachers. Daniel de Vise, \textit{Sex-Case Teachers' Pay to be Restored}, \textit{MIAMI HERALD} (Broward), Aug. 18, 1999, at 1A. In June 2000, a Broward judge threw out the lewdness charges, ruling that group sex is not illegal absent intent to offend. Paul Brinkley-Rogers, \textit{Trapeze Sex Club Case Takes a Tumble}, \textit{MIAMI HERALD} (Broward), June 15, 2000, at 1B. In July 2000, the co-owner of the Trapeze II vowed to sue the Broward County Sheriff for false arrest. \textit{Id.} Paul Brinkley-Rogers, \textit{Angry Swingers Plan Legal Action Against Sheriff}, \textit{MIAMI HERALD} (Broward), July 19, 2000, at 1B.

\item 336. Judy Odiema, \textit{Accused Coach Gets Lift From Supporters}, \textit{MIAMI HERALD} (Broward), June 22, 2000, at 12B (coach suspended over allegations he molested two of his players); Johnny Diaz, \textit{Fondling Suspect Has Prior Arrests}, \textit{MIAMI HERALD} (Broward), Apr. 22, 2000, at 3B (program director at a Broward social service agency suspected of molesting a thirteen-year-old boy); Wanda J. DeMarzo, \textit{Cop in Child–Sex Case Freed on Bail}, \textit{MIAMI HERALD} (Broward), Nov. 25, 1999, at 2C; Wanda J. DeMarzo, \textit{Sunrise Detective Arrested, Accused of Molesting Girl}, \textit{MIAMI HERALD} (Broward), Nov. 24, 1999, at 3B; Adam Ramirez, \textit{Schoolteacher Pleads Not Guilty to Sex Assault Charges}, \textit{MIAMI HERALD} (Broward), Sept. 8, 1999, at 3B.

\item 337. Jay Weaver, \textit{Man Cleared of Sex Charge Wants Job Back}, \textit{MIAMI HERALD} (Broward), Nov. 4, 1999, at 7B.

\item 338. Nancy Klingener, \textit{Key West Officer Stars in Magazine ‘Sex Show’}, \textit{MIAMI HERALD} (Broward), Aug. 13, 1999, at 11B.

\item 339. Don Finefrock, \textit{‘Public Integrity' Issue Prompts Police Probe}, \textit{MIAMI HERALD} (Broward), Nov. 28, 1999, at 1B.

\item 340. Gail Epstein Nieves, \textit{Decoy Prostitute Recounts Officer’s Offer}, \textit{MIAMI HERALD} (Broward), July 22, 2000, at 7B (Miami police major caught by his own department’s decoy prostitute); \textit{A Ranking Police Officer is Reassigned in Miami}, \textit{N.Y. TIMES} (Nat’l ed.), June 27, 2000, at A20 (Miami police officer who took part in the Elian Gonzalez raid was removed from his job for soliciting sex from an undercover police officer); Elaine De Valle, \textit{Judge Exonerated on Charge of Soliciting Undercover Officer}, \textit{MIAMI HERALD} (Broward), Sept. 3, 1999 at 9B.
\end{enumerate}
1. Sex

A Hollywood High School marine biology teacher was accused of exposing himself to a student during a field trip and attempting to kiss another student's navel at school. Three Okaloosa County sheriff's deputies were suspected of having sex with high school interns while on the job and supplying the interns with alcohol. North Miami's 1998 Police Officer of the Year was discharged after allegations that he masturbated in front of a female city employee. A Fort Lauderdale police officer was accused of fondling a woman and her two daughters while searching them amid a fake drug raid. A guard was accused of raping a Mexican transsexual twice at the Krome Immigration Detention Center. Five employees at Broward County's privately run work-release center for nonviolent criminals have quit or been fired after claims they engaged in sexual liaisons with inmates under their control.

2. Negligence

A firefighter was disciplined for failing to report for his night shift after serving jury duty all day. A Fort Lauderdale police officer was suspended thirty days without pay for standing idly by while a fellow officer allegedly committed grand theft. A former building inspector was investigated for

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341. Adam Ramirez, Hollywood Teacher Accused of Exposing Himself to Student, MIAMI HERALD (Broward), Sept. 10, 1999, at 3B; see also Andrew Speranzini, Comment, Paying for Sex—When is a School District Liable for Teacher-Student Sexual Harassment Under Title IX?, 51 FLA. L. REV. 589 (1999).

342. Deputies Linked to Sex Scandal with Interns, MIAMI HERALD (Broward), Aug. 20, 1999, at 9B.

343. Ivonne Perez, N. Miami Cop Fired After Masturbation Investigation, MIAMI HERALD (Broward), Nov. 9, 1999, at 11B.

344. David Green, Police Officer Charged in Fondling Incidents, MIAMI HERALD (Broward), Mar. 30, 2000, at 3B.

345. Andres Viglucci, Krome Detainee Alleges Second Sex Assault by Guard, MIAMI HERALD (Broward), June 6, 2000, at 8B.

346. Jacqueline Charles, Sheriff Told to Clean Up Private Jail, MIAMI HERALD (Broward), Aug. 18, 1999, at 1B.

347. Hearing Considers Firefighter's Case, MIAMI HERALD (Broward), Nov. 20, 1999, at 2B.

348. Brad Bennett, Let One Accused Cop Keep Job, Panel Urges, MIAMI HERALD (Broward), Apr. 27, 2000, at 7B.
allegedly shoddy inspections at several homes. A Pembroke Pines building inspector resigned over allegations he neglected his duties. Five state child care agency employees were fired after the death of a two-year-old girl for failing to protect the child. Finally, a court reporter was jailed after missing deadlines for handing in transcripts in a murder trial.

3. Public and Private Records Violations

A jury found an Escambia County School Board member guilty of violating Florida’s “Sunshine law” for withholding files from a parent—although, a judge later reversed the conviction. In Broward County, a deputy fire chief was fired over alleged violations of the confidentiality of medical information about a job applicant.

4. Public School Employee Misconduct

Two school resource officers received written warnings after allegedly transmitting explicit e-mails on school computers. A Silver Trail Middle School teacher from Broward County was placed on paid leave for allegedly teaching his science students how to build bombs. Finally, allegations

349. Steve Harrison, Building Inspector is Target of Probe, MIAMI HERALD (Broward), Mar. 10, 2000, at 3B.
350. Steve Harrison, Pines Inspector Resigns Amid Loafing Allegations, MIAMI HERALD (Broward), May 31, 2000, at 3B.
351. Two Lose State Jobs After Toddler’s Death, MIAMI HERALD (Broward), Sept. 5, 1999, at 6B.
352. Frances Robles, Ex-Court Reporter Jailed for Failing to do Transcript, MIAMI HERALD (Broward), Dec. 4, 1999, at 10B.
353. Ruling May Limit Access to Records, MIAMI HERALD (Broward), Nov. 9, 1999, at 12B.
354. Elena Cabral, Davie’s Deputy Fire Chief Fired, MIAMI HERALD (Broward), July 2, 2000, at 1B.
355. School Officers Get Warning for Explicit E-mail Videos, MIAMI HERALD (Broward), July 3, 2000, at 9B. Dismissal, not simply a warning, was the punishment meted out to a Miami-Dade prosecutor for receiving sexually explicit e-mail at the office on a state computer. Id.; Joan Fleischman, Prosecutorial Misconduct?, MIAMI HERALD (Broward), Dec. 8, 1999, at 4A; see James Garrity & Eoghan Casey, Internet Misuse in the Workplace: A Lawyer’s Primer, 72 FLA. BAR J., (1998), at 22.
surfaced that Miami-Dade public school teachers changed grades of star athletes.  

5. Phone Calls

A City of Miami audit found that city employees made hundreds of personal long-distance calls on city phones during two months in 1999.

6. Safety Violations

A Miami-Dade County bus driver lost his job twice for allegedly committing safety violations.

7. Overtime Violations

Opa-locka police, working on overtime, allegedly protected a private gym owned by a drug kingpin.

8. Unlawful Compensation

A former Hollywood police officer was acquitted of charges that he promised a motorist that he would not give her a speeding ticket if she agreed to go out with him.

9. Violence

Four veteran corrections officers were charged with a murder seven months after a death row inmate was fatally beaten in his cell at a Florida state prison. Two Broward County Sheriff’s Office SWAT officers were

357. Ken Rodriguez, *Teachers Silent in Grade Probe*, MIAMI HERALD (Broward), Nov. 17, 1999, at 11B.
358. Charles Rabin, *Audit: Personal Phone Calls Cost Miami Plenty*, MIAMI HERALD (Broward), June 16, 2000, at 7B.
362. Phil Long & Steve Bousquet, *4 Charged in Inmate Death*, MIAMI HERALD (Broward), Feb. 3, 2000, at 1A.
on paid leave pending an investigation into their shooting of a hostage taker in Pompano Beach.\textsuperscript{363} In Broward County, an assistant state attorney was charged with battery after allegedly slugging a defense attorney over a pending case.\textsuperscript{364} A former Miami-Dade corrections officer was convicted of beating a veteran jailhouse snitch and lying about it under oath.\textsuperscript{365}

10. Lying, Unbecoming Conduct, and Vulgar Language

In \textit{Department of Business \& Professional Regulation v. Doyle},\textsuperscript{366} a public employee appealed the decision of the Public Employees Relations Commission’s ruling sustaining her dismissal from the Department for lying, unbecoming conduct, and vulgar language.\textsuperscript{367} In another “lying” case, prosecutors decided not to indict Hialeah’s police chief for giving false testimony about his son’s auto theft arrest when he sought to join his dad’s department.\textsuperscript{368}

11. Health-Care Fraud

Twenty-five Sunrise police officers are under investigation for their alleged role in a medical fraud scheme in which doctors wrote illegal prescriptions for the twenty-five police officers and conspired with them to commit insurance fraud.\textsuperscript{369}

C. Whistleblowing, Retaliatory Discharge, and the First Amendment

While public employees do not shed their First Amendment right to free speech at the workplace door, public employers may place reasonable

\begin{thebibliography}{99}
\bibitem{2} 2 \textit{Officers on Paid Leave After Fatal Shooting}, \textit{MIAMI HERALD} (Broward), Mar. 3, 2000, at 10B.
\bibitem{36} Sabrina L. Miller, \textit{Judge Grants Mistrial After Attorneys’ Brawl}, \textit{MIAMI HERALD} (Broward), Aug. 25, 1999, at 3B.
\bibitem{365} Frances Robles, \textit{Jail Guard Convicted in Beating of Inmate}, \textit{MIAMI HERALD} (Broward), Nov. 12, 1999, at 12B.
\bibitem{366} 750 So. 2d 746 (Fla. 1st Dist. Ct. App. 2000).
\bibitem{367} \textit{Id.} at 747.
\bibitem{368} Frances Robles, \textit{Prosecutor: Police Chief Lied, but Won’t be Charged}, \textit{MIAMI HERALD} (Broward), July 20, 2000, at 7B.
\bibitem{369} Herald Staff \& Wire Reporter, \textit{Sunrise Police Records Subpoenaed in FBI Health-Care Fraud Investigation}, \textit{MIAMI HERALD} (Broward), July 23, 2000, at 3BR.
\end{thebibliography}
restrictions on speech in the public workplace. In a nutshell, speech on matters of private concern receive virtually no protection, but speech on matters of public concern must then be balanced against the public employer’s right to run an efficient agency.

In the past year, public employees’ First Amendment free speech rights cases took on many different forms. Among them was a proposed agreement reached between Miami-Dade county and public school teachers whereby teachers were given more freedom to speak out on matters involving the school district. Additionally, on March 17, 2000, a federal judge ruled that the Miami-Dade County Commission did not infringe on the free speech rights of a member of an advisory board when it removed her for criticizing the county’s policy on Cuba. As the judge put it, “Ms. McKinley was removed because the expression of her political views affected her ability to do her job.” Yet, an assistant to a state senator was dismissed after writing a letter to a newspaper on the state e-mail system, speaking out about the litter left by a Florida plan protester.

In June 2000, a retired public school teacher successfully challenged the Broward School Board’s decision to fire him for refusing to remain in the classroom while his students said the Pledge of Allegiance. In yet another key case, the director of the Miami-Dade Community Relations Board was removed from his position for allegedly telling the former board chairman to “kiss my a—.” Finally, two employees of the Miami-Dade Police

370. See, e.g., FLA. CODE OF JUD. CONDUCT, Canon 7 (spelling out what speech by judges and judicial candidates is permissible).

371. See, e.g., Judge Dismisses Lawsuit by Fired Assistant County Attorney, MIAMI HERALD (Broward), Feb. 2, 2000, at 3B. A former interim Broward County attorney’s claim that he was discharged in violation of his First Amendment rights was dismissed by a federal court judge.

372. Analisa Nazareno, Teachers Get Solid Raise in Contract Offer, MIAMI HERALD (Broward), July 4, 2000, at 6B.

373. Don Finefrock, Judge: No Free Speech Violation, MIAMI HERALD (Broward), Mar. 25, 2000, at 8B.


375. Steve Bousquet, Senator Fires Aide Who Wrote E-mail, MIAMI HERALD (Broward), Mar. 11, 2000, at 10B.

376. Olivier Stephenson, Leroy Bates, Who Refused to Pledge Allegiance, MIAMI HERALD (Broward), June 28, 2000, at 4B.

377. Andrea Robinson, County Official Fired for Remark After a Meeting, MIAMI HERALD (Broward), Apr. 22, 2000, at 9B.
Department were "counseled" after allegedly speaking out against Miami-Dade's mayor who talked tough during the Elian Gonzalez affair.  

A whistleblower is an individual who speaks out about illegal or improper activity that he or she has witnessed and who is subsequently punished for blowing the whistle. There were a number of whistleblower cases decided in the past year. In Fields v. United States Department of Labor Administration Review Board, the Eleventh Circuit Court of Appeals ruled that employees who intentionally caused a violation of the Energy Reorganization Act were not entitled to protection under the Act's whistleblower provision. Also, an administrative judge ordered the United States Customs Service to clear the records of one of the most outspoken critics of the Customs Service in Miami who had been punished for his criticism. In yet another whistleblower case, three City of Hollywood workers claimed they were victims of retaliation and discrimination after they made statements to police probing into whether undue health benefits were wrongfully approved for city employees and their families. In another case, a former police officer decided to cross the blue wall of silence and testify against other officers who shot an innocent homeless man in Coconut Grove—a breakthrough in one of Miami's largest corruption cases. Lastly, in Chase v. Walgreen Co., an employee claimed his employer violated Florida law by retaliating against him for filing a workers' compensation claim.

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378. Don Finefrock, Dade Cops 'Counseled' for Remarks, MIAMI HERALD (Broward), Apr. 19, 2000, at 11B.
379. See generally FLA. STAT. § 448.102 (2000).
380. 173 F.3d 811 (11th Cir. 1999).
382. Fields, 173 F.3d at 814.
383. David Kidwell, Judge Slams U.S. Customs Targeting Whistle-Blower, MIAMI HERALD (Broward), Apr. 17, 2000, at 10B; David Kidwell, Inside Critics Say Customs Crackdown is Targeting Them, MIAMI HERALD (Broward), Nov. 29, 1999, at 6B; Editorial, A Customs Snare?, MIAMI HERALD (Broward), Nov. 20, 1999, at 12B; Editorial, Reform in U.S. Customs Service?, MIAMI HERALD (Broward), Dec. 4, 1999, at 12B.
384. Wanda J. DeMarzo, Health Benefits Scandal Broadens, MIAMI HERALD (Broward), June 28, 2000, at 1B; Neil Reisner & Wanda DeMarzo, Health Plan Boss Fired, MIAMI HERALD (Broward), Mar. 24, 2000, at 1B.
385. Frances Robles, Ex-Cop Agrees to Testify Against Fellow Police Officers, MIAMI HERALD (Broward), Mar. 9, 2000, at 9B.
386. 750 So. 2d 93 (Fla. 5th Dist. Ct. App. 1999).
387. Id. at 94.
D. Employment Discrimination

1. Statistics

The number of civil rights employment cases filed in federal courts has leveled off in recent years at roughly 23,000 per year.\textsuperscript{388} By contrast, employee lawsuits claiming their employers retaliated against them for filing or assisting with discrimination claims has risen dramatically: twenty-four percent of all claims lodged with the Equal Employment Opportunity Commission ("EEOC") stem from retaliation, up from fifteen percent in 1992.\textsuperscript{389} Indeed, Fort Lauderdale's own diversity specialist has spoken out about the increase in retaliation against city employees who file employment discrimination complaints.\textsuperscript{390} State law prohibits retaliation against employees for filing employment discrimination suits.\textsuperscript{391}

Employment discrimination claims in Broward County based on race have doubled, from eighty-eight in 1992, to 194 in 1999, according to the EEOC.\textsuperscript{392} Similarly, sexual harassment claims in Broward have risen from thirty-two in 1992, to ninety-three in 1999.\textsuperscript{393} Despite this rise, Broward County's Human Rights Division Director, charged with investigating discrimination claims by Broward County residents, was dismissed after receiving a vote of "no confidence" last year from Broward's Human Rights Board for inaction in investigating claims of bias over the years.\textsuperscript{394} The rate of growth of employment discrimination claims in Miami-Dade has been slower: sexual harassment claims have gone from eighty-eight in 1992 to 170 in 1999.\textsuperscript{395} All told, harassment complaints have increased thirty-three percent in Miami-Dade from 219 in 1992 to 292 in 1999.\textsuperscript{396}

\begin{footnotesize}

\textsuperscript{389} Oppel, supra note 388.

\textsuperscript{390} Brad Bennett, Memo: Workers Punished for Complaining, MIAMI HERALD (Broward), Oct. 21, 1999, at 1B.

\textsuperscript{391} FLA. STAT. § 760.10(7) (2000).

\textsuperscript{392} Brad Bennett, Workplace Bias on Rise, Expert Says, MIAMI HERALD (Broward), June 16, 2000, at 3B.

\textsuperscript{393} Id.

\textsuperscript{394} Brad Bennett, County Fires Embattled Anti-Discrimination Leader, MIAMI HERALD (Broward), Mar. 30, 2000, at 1B.

\textsuperscript{395} Bennett, supra note 392.

\textsuperscript{396} Id.
\end{footnotesize}
2. Race

In the past year, a wide range of cases involving employment discrimination on grounds of race have emerged. There have been several articles alleging that Fort Lauderdale discriminates against minority employees. In January 2000, the EEOC ruled that the city discriminated against two African-American workers, then retaliated against one of them for complaining. The EEOC also sustained a city firefighter's claim of racial and gender bias. Even a memorial service held by the city for employees who have died on the job sparked racial protest. Moreover, hiring the first African-American city manager has done little to quell employment discrimination complaints in Fort Lauderdale. Recently, however, community leaders have drafted a list of recommendations aimed at strengthening fairness for city workers and will submit them to the City Commission. Fort Lauderdale released a report in July 2000, which showed that the city's work force is twenty-one percent black, which is higher than the percentage of blacks in Broward County, fifteen percent, while admitting that most minority employees fill the lower ranks. Black state legislators urged the governor to conduct an outside investigation into the alleged "long history" of racial discrimination against African-American employees in Florida's prisons. A Miami-Dade teacher, who was dismissed, alleged she was discriminated against for her high-profile work on behalf of South Florida's African-American community. The NAACP

397. Brad Bennett, City's Bias Claims Persist, MIAMI HERALD (Broward), Apr. 10, 2000, at 1A; Brad Bennett, Finding: Fort Lauderdale Discriminated Again, MIAMI HERALD (Broward), Apr. 1, 2000, at 1B.

398. Brad Bennett, Workers' Charges Upheld, MIAMI HERALD (Broward), Jan. 21, 2000, at 1A.

399. Adrienne Samuels, U.S. Panel Backs Firefighter's Claims of Bias, MIAMI HERALD (Broward), Mar. 14, 2000, at 1B.

400. Brad Bennett, Memorial for Lauderdale Employees Sparks Debate, MIAMI HERALD (Broward), Apr. 29, 2000, at 3B.

401. Brad Bennett, Black Activists Criticize Fort Lauderdale, MIAMI HERALD (Broward), Nov. 17, 1999, at 3B; Brad Bennett, Lauderdale Leader Committed to Making a Difference, MIAMI HERALD (Broward), Nov. 21, 1999, at 1BR.

402. Brad Bennett, Plan Seeks Fairness for City Employees, MIAMI HERALD (Broward), Nov. 13, 1999, at 1B.

403. Brad Bennett, Ft. Lauderdale Report Touts City Record for Hiring Blacks, MIAMI HERALD (Broward), July 22, 2000, at 1B.

404. Lesley Clark, Prison Racism Probe Demanded by Legislators, MIAMI HERALD (Broward), Mar. 30, 2000, at 9B.

405. Robert Sanchez, Race Accusations Fly Over Teacher's Impending Firing, MIAMI HERALD (Broward), April 10, 2000, at 8B.
characterized Sarasota County’s reassignment of the sole black man holding the key post at a county public school as racist. 406

3. Gender

a. Sexual Harrasment

A recurring theme over the last year involving sexual harassment stems from the situation of a public employer rehiring a known sexual harasser. 407 Less than a year after a Hollywood police officer was dismissed for “leering” at a female officer, he was rehired as a police officer by the Fort Lauderdale Police Department. 408 A parking enforcement officer for Fort Lauderdale who was warned he would be dismissed for sexually harassing female colleagues got a second chance, but harassment complaints continued. 409 In another case involving Fort Lauderdale, the city was ordered to pay $70,000 to a female city employee who filed for harassment that took place after the city had fired, and then rehired the harasser. 410 In yet another incident, a state representative twice pressured the Department of Corrections administrators to rehire a former prison chief earlier dismissed for, among other things, sexual harassment. 411

b. Sexual Assault

A federal jury found a former Opa-locka City Manager liable for sexual harassment and awarded the receptionist $1.5 million for assault and $500,000 for sexual harassment. 412
c. Sexually-Explicit Comments

The vice mayor of Pembroke Park, located in Broward County, was sued by a former city employee who alleged the vice mayor made sexually explicit comments over a five year period.\textsuperscript{413} The director of Broward Community College’s Buehler Planetarium was placed on administrative leave pending an investigation into a secretary’s claim of sexual harassment.\textsuperscript{414} By one account, the county employee alleges she overheard the director tell a joke containing sexual content.\textsuperscript{415} Subsequently, the director’s contract with Broward Community College was not renewed, allegedly on grounds unrelated to the sexual harassment complaint.\textsuperscript{416} A Miami-Dade county employee sued the county, alleging her boss told sexual jokes, remarked about her attire, invited her to the movies, wrote her about his fantasies, and staged a hotel room tryst on a business trip.\textsuperscript{417} A jury found a former Northwestern High School principal liable for sexual harassment and awarded the victim $500,000 plus $100,000 for humiliation and $100,000 in punitive damages.\textsuperscript{418} Allegedly, the principal waved a wad of $100 bills in the victim’s face while asking, “Is this enough for you?”\textsuperscript{419}

What is severe or pervasive conduct? In \textit{Mendoza v. Borden, Inc.},\textsuperscript{420} the Eleventh Circuit ruled in a Florida case that a supervisor’s persistent following and staring at an employee did not amount to severe or pervasive conduct sufficient to change the employee’s terms or conditions of employment.\textsuperscript{421} For this reason, the employee’s hostile environment sexual harassment claim was dismissed.\textsuperscript{422}

\begin{itemize}
\item \textsuperscript{413} Andrea Elliott, \textit{Ex-Pembroke Park Worker Charges Sexual Harassment}, \textit{Miami Herald} (Broward), May 24, 2000, at 11B.
\item \textsuperscript{414} Wanda J. DeMarzo, \textit{BCC Planetarium Chief Accused of Sex Harassment}, \textit{Miami Herald} (Broward), Feb. 19, 2000, at 3B.
\item \textsuperscript{415} Id.
\item \textsuperscript{416} Shari Rudavsky, \textit{BCC Officials Oppose Renewing Contract of Planetarium Director}, \textit{Miami Herald} (Broward), June 27, 2000, at 3B.
\item \textsuperscript{417} Harriet Johnson Brackey, \textit{Sex and Work Mix Poorly}, \textit{Miami Herald} (Broward), Oct. 8, 1999, at 1C.
\item \textsuperscript{418} Editorial, \textit{She Sued, She Won—and Now She Forgives}, \textit{Miami Herald} (Broward), Jan. 7, 2000, at 12B.
\item \textsuperscript{419} Id.
\item \textsuperscript{420} 195 F.3d 1238 (11th Cir. 1999), \textit{cert. denied}, 120 S. Ct. 1674 (2000).
\item \textsuperscript{421} Id. at 1252.
\item \textsuperscript{422} Id. at 1253.
\end{itemize}
4. Religion

Under federal and state anti-discrimination laws, employers bear the duty of reasonable accommodation of their employees' religious beliefs and practices. In a recent case, *Hellinger v. Eckerd Corp.*, a Jewish pharmacist was turned down for employment because his religious beliefs compelled him to refuse to sell condoms. The court denied the employer's motion for summary judgment reasoning that a jury must decide whether it is an undue burden for the employer to accommodate Hellinger's religious beliefs by, for example, relocating condoms to another part of the store, or allowing him to direct condom buyers to cashiers at the front of the store.

5. Age

Since 1995, the United States Supreme Court has struck down twenty-four federal statutes, ruling that in each case Congress had exceeded its authority under the Constitution of the United States. The latest casualty in the Court's foray into federalism was congressional efforts to extend the federal Age Discrimination in Employment Act to state employees. In a case out of Florida, *Kimel v. Florida Board of Regents*, the Court held that neither the Commerce Clause, nor section five of the Fourteenth Amendment enabled Congress to waive states' sovereign immunity. As a result of this ruling, state employees have the following options in remedying age discrimination: 1) they can sue under Florida's statute banning age discrimination—although procedures, standards and remedies may not reflect erstwhile protection under the Federal Age Discrimination in Employment Act; 2) the federal government can sue states—but scarce resources make this option illusory; 3) public officials can be sued in their individual capacities for age discrimination—but you can't squeeze blood out of a turnip; 4) the state can waive its immunity—which is highly

424. Id. at 1361.
429. Id. at 78–82.
unlikely; and 5) states can be sued for injunctive relief—arguably allowing reinstatement as a partial remedy, but no recovery of damages. 430

6. Disability

The United States Supreme Court has agreed to hear a case calling into question Congress’ authority to give state employees the right to sue other state employees in federal court under the ADA. 431 Judging by the Court’s ruling in Kimel and its newfound inclination to challenge congressional power under section five of the Fourteenth Amendment, disabled state workers may end up with the same weak options victims of age discrimination that they had before that Supreme Court decision.

In other disability cases, Miami Beach settled an “excessive force-false arrest” lawsuit against an HIV-positive police officer who sustained cuts on his hands during an arrest even though the law denies damages “for the fear of having AIDS, even if you don’t get it.” 432 The plaintiff’s attorney claimed it was a health hazard for the city to allow an HIV-positive officer to have contact with the public. 433 The Broward County clerk of records came under fire for not resigning his position despite being disabled and unable to fulfill his official duties. 434 A Miami Herald editorial urged state lawmakers to find ways to encourage disabled public officials to resign or to provide a means of removing them without disgracing them. 435

Another ADA case, Davis v. Florida Power & Light Co., 436 addressed the question of what is an essential function of an employee’s job for purposes of proving that an employee is a qualified individual under the ADA. 437 In this case, the court ruled that mandatory overtime work was an

430. See Kimel, 528 U.S. 62.

431. Garrett v. Univ. of Ala., 193 F.3d 1214 (11th Cir. 1999), cert. granted, 120 S. Ct. 1669 (2000) (holding that where state employee sued state after allegedly suffering disability discrimination at the University of Alabama following treatment for breast cancer, states have no constitutional immunity from ADA lawsuits). Id. at 1216.


433. Id.

434. Editorial, Dignity For Disabled Officials, MIAMI HERALD (Broward), Jan. 13, 2000, at 10B.

435. Id.

436. 205 F.3d 1301 (11th Cir. 2000), cert. denied 121 S. Ct. 304 (2000).

437. Id. at 1304; see also 42 U.S.C. § 12111(8) (1994).
essential function of an employee's job and that accommodating the employee's request of no overtime or selective overtime was not required by the ADA, since it entailed violating the collective bargaining agreement's seniority provisions.  

7. Affirmative Action

On July 13, 2000, the Supreme Court of Florida ruled that four proposed constitutional amendments offered by the Florida Civil Rights Initiative that would have ended affirmative action in public employment, as well as in public education and purchasing, were misleading and overbroad. The unanimous decision made clear that the proposed amendments were too wide-ranging and would short-circuit state efforts aimed at protecting citizens against discrimination, a role mandated by Florida's Constitution.

On the issue of bidding for construction contracts, many municipalities have prescribed so-called "set-aside" laws, which require that a certain percentage of public construction contracts go to minority-owned businesses. As a version of affirmative action on grounds of race and gender, these laws have been challenged as violations of equal protection. Despite the trend of striking down this version of preferential treatment, some laws have survived judicial scrutiny.

In United States v. City of Miami, a public employees' union sued the City of Miami, claiming that promotions of two African-American police officers violated a consent decree ordering the city to set promotional goals for members of minority groups. While the federal district court held the city in contempt and awarded full relief to white and Hispanic police officers who were injured by the city's action, the court of appeals ruled that the

438. Davis, 205 F.3d at 1305.
441. See Steven A. Holmes, What is a Minority-Owned Business, N.Y. TIMES (Nat'l ed.), Oct. 12, 1999, at C6 ("Some say 51% ownership; others go with 30%.").
442. Fred Grimm, Low-Income Housing it Isn't, MIAMI HERALD (Broward), Oct. 19, 1999, at 1B.
443. Don Finefrock, Judge Refuses to Stop Minority Set-Asides, MIAMI HERALD (Broward), Oct. 5, 1999, at 10B (a Miami federal judge sustained Miami-Dade County's set-aside program for minority architects and engineers).
444. 195 F.3d 1292 (11th Cir. 1999).
445. Id. at 1294.
proper remedy was pro rata share, not full share, of the monetary value of the promotion for which each injured officer was eligible. 446

E. Remedies for Wrongful Discharge

1. Money Damages

After eight years of legal wrangling, a former Broward County School Board candidate recovered $600,000 from the school board for leaking confidential psychological reports of the candidate to the news media. 447 Transcripts of interviews described the former Oakland Park teacher as plotting to kill his aunt in an inheritance dispute. 448 Five hundred thousand dollars of the total damage award needed legislative approval since state law requires legislative approval of large negligence claims against government agencies. 449 The jury had awarded the successful litigant $750,000, but the full Senate only approved an additional $500,000. 450 Finally, a jury awarded a former Hollywood police chief $200,000 in damages and attorneys' fees against the city for discharging him in violation of whistleblower laws, after he reported hiring problems in his department to the state attorney's office. 451

2. Attorneys' Fees

The City of Fort Lauderdale was ordered to pay $31,000 in legal fees incurred by an African-American city employee who sued the city for destroying documents that would have helped his employment discrimination case against the city. 452 Similarly, the City of Hollywood was ordered to pay its wrongfully dismissed police chief $269,000 in legal

446. Id. at 1300.
447. Daniel de Vise, Oakland Park Teacher May Get $600,000, MIAMI HERALD (Broward), Mar. 21, 2000, at 3B.
448. Id.
449. Daniel de Vise, Teacher Awarded an Extra $500,000, MIAMI HERALD (Broward), Mar. 9, 2000, at 3B.
450. Daniel de Vise, Ex-Teacher Nears Award in Suit Against School Board, MIAMI HERALD (Broward), Feb. 10, 2000, at 3B.
451. Caroline J. Keough, Ousted Hollywood Chief Wins Lawsuit, MIAMI HERALD (Broward), Mar. 10, 2000, at 1A.
452. Brad Bennett, Lauderdale Loses Records Dispute, MIAMI HERALD (Broward), May 19, 2000, at 1B.
fees. When a public employee convinces the
Public Employees Relations Commission ("PERC") that he or she was
wrongfully disciplined, state law dictates that the Commission award
reasonable attorneys' fees. In Gaston v. Department of Revenue,
however, the court ruled that the statutory amendment did not apply to a case
that was no longer pending before PERC on the amendment's effective
date.

3. Reinstatement and Back Pay

A former City of Miami employee who pleaded guilty to five felonies
involving voter fraud asked an arbitrator for his job back and $52,000 in
back pay. The former employee claimed the city failed to investigate over
twenty other employees who allegedly committed voter fraud as well.
Similarly, a Miami-Dade building inspector, indicted for allowing Dadeland
Station to open in shoddy condition, sued the county seeking reinstatement,
and $5 million for emotional distress, after state prosecutors dropped their
case against him.

4. Appeals to Public Employees Relations Commission

In Noone v. Florida Department of Corrections, the question raised
was whether PERC properly refused to hear an appeal by a dismissed public
employee after he failed to show up at a hearing. PERC ruled that the
employee was not at fault for failing to keep in touch with his attorney.

453. Wanda J. Demarzo, $269,000 More Goes to Fired Cop, MIAMI HERALD
(Broward), May 6, 2000, at 6B.
454. Id.
456. 742 So. 2d 517 (Fla. 1st Dist. Ct. App. 1999).
457. Id. at 520.
458. Manny Garcia, Vote-Fraud Player Seeks Old Job as City of Miami's Systems
Worker, Lost Wages, MIAMI HERALD (Broward), Aug. 26, 1999, at 1B.
459. Id.
460. Don Finefrock, Suspended Dade Building Official Sues for His Job—Plus
Damages, MIAMI HERALD (Broward), Dec. 3, 1999, at 5B.
461. 745 So. 2d 481 (Fla. 1st Dist. Ct. App. 1999).
462. Id. at 481.
463. Id. at 482.
As a result, the court reversed the dismissal and remanded the case for an evidentiary hearing. 464

5. Section 1985(3) Claims Alleging Conspiracy Under the Civil Rights Act

In a case of first impression in the Eleventh Circuit, Dickerson v. Alachua County Commission, 465 the court was faced with the question of whether a Title VII claim preempts a subsection three of section 1985 claim where the same facts support both claims. 466 Subsection three of section 1985 provides for the recovery of damages by an individual who is harmed by a conspiracy to deprive such person of equal protection of the laws or of equal privileges and immunities under the laws. 467 The question raised in this case was whether Title VII, with its comprehensive remedial scheme, affords the sole remedy for employment discrimination raised by a public employee. 468 The court concluded that Title VII does not preempt a constitutional cause of action under subsection three of section 1985, relying on congressional intent to retain that section as a parallel remedy for unconstitutional workplace discrimination. 469

The second issue in Dickerson involved the "intracorporate conspiracy doctrine," which provides that a corporation's employees, serving as agents of the corporation, are deemed incapable of conspiring among themselves or with the corporation, just as it is not possible for an individual to conspire with himself. 470 This doctrine has been applied to public universities as well. 471 Relying on circuit precedent, the court concluded that the intracorporate conspiracy doctrine barred the employee’s civil rights conspiracy claim. 472

464.  Id.
465. 200 F.3d 761 (11th Cir. 2000).
466.  Id. at 765.
467.  Id. at 766.
468.  Id.
469.  Id. at 766–67.
470. 200 F.3d at 767; see also Chambliss v. Foote, 562 F.2d 1015 (5th Cir. 1977), affg, 421 F. Supp. 12, 15 (E.D. La. 1976) (applying the intracorporate conspiracy doctrine to foreclose a section 1985(3) claim against a public university and its officials).
471.  Chambliss, 562 F.2d at 1015.
472.  See Dickerson, 200 F.3d at 770.
6. Exhaustion of Administrative Remedies

In *Public Health Trust v. Hernandez*, the court denied an employee’s motion to compel arbitration of his dispute with his employer, a Miami-Dade County agency. Instead, the employee was ordered first to exhaust his administrative remedies, i.e., the four step grievance procedure set out in the collective bargaining agreement.

VI. PUBLIC SECTOR COLLECTIVE BARGAINING ISSUES

A. Union Election Issues

The biggest public employee union vote in over a decade in South Florida, involving 5400 employees in four public hospitals and two dozen clinics, ended after eighteen months of bitter campaigning. Nurses and other hospital professionals at the North Broward Hospital District voted 1242 to 957 against joining the Service Employees International Union in November 1999. The union has vowed to appeal the outcome to Florida’s Labor Relations Board, alleging wrongdoing by the hospital district and state election monitors. A few days before the nurses and professional employees voted, the non-professional employees at the public hospital voted against joining a union as well. The vote took place after the state PERC turned down union claims that the election process was undermined because the chair of the commission had a conflict of interest—she is married to a paid district lobbyist. The union also tried to delay the vote owing to the hospital district’s failure to hand over an accurate list of eligible employees’ addresses, because no hearing had been held addressing union allegations that the hospital district had committed unfair campaign

473. 751 So. 2d 124 (Fla. 3d Dist. Ct. App. 2000).
474. Id. at 125.
475. Id.
476. Bob LaMendola, *Union Campaign Nearing Bitter End*, SUN SENTINEL (Broward), Nov. 14, 1999, at 1B.
477. Staff Reports, *Professionals, Nurses Nix Union*, SUN SENTINEL (Broward), Nov. 21, 1999, at 3B.
478. Id.
479. Karen Rafinski, *Union Fights Uphill Battle to Sign Up Hospital Workers*, MIAMI HERALD (Broward), Nov. 20, 1999, at 4B.
480. *Union Election Begins at Hospital District*, MIAMI HERALD (Broward), Nov. 17, 1999, at 2B.
481. See id. The district relied on a state law effective July 1999, that bars it from disclosing the home addresses of healthcare workers.
practices, and because of practical problems over the way the election was being conducted. Nurses triggered the union drive after layoffs owing to a 1995 budget deficit increased their work load. In March 2000, the district and the union reached a settlement over some of the union’s outstanding claims of unfair labor practices committed during the campaign.

B. Government Unions

Union membership in the public sector grew from 37.2% in 1997 to 37.5% in 1998, according to the Bureau of Labor Statistics. During the same period, membership in the private sector fell to 9.5% from 9.7%. This trend owes much to the fact that generally government employers do not fight unionization, while many private employers do.

The nation’s largest public sector union, the American Federation of State, County and Municipal Employees (“AFSCME”), faced charges of corruption recently. An internal audit spelled out how union officers “forged checks, made unauthorized withdrawals from union accounts, siphoned union dues into their personal accounts and used union credit cards for personal expenses.”

Closer to home, the Broward State Attorney’s office launched an investigation into AFSCME Local 532, the union representing Fort Lauderdale city employees. City employees claim the union refused to release financial records detailing where members’ dues money was going. The investigation came amid a challenge by the Fraternal Order of Police to replace AFSCME Local 532 to represent 1000 city employees.

482. Vivi Abrams, Union: Hospital District Unfair, MIAMI HERALD (Broward), Oct. 13, 1999, at 3B.
483. Union Seeks Delay In Hospital Workers’ Vote, MIAMI HERALD (Broward), Nov. 9, 1999, at 2B.
484. Hospital District, Union Settle Grievances, MIAMI HERALD (Broward), Mar. 11, 2000, at 2B.
486. Id.
487. Id.
489. Id.
490. Brad Bennett, City Workers Union Target of Investigation, MIAMI HERALD (Broward), Feb. 10, 2000, at 3B.
491. Id.
492. Brad Bennett, Union Aims to Compete for Workers, MIAMI HERALD (Broward), Feb. 9, 2000, at 3B.
Miami, the head of the AFSCME union representing city employees criticized Miami commissioners, the police, and fire unions during a commission meeting on the city's budget.\textsuperscript{493} In sum, the union leader criticized the police department’s paying overtime to officers—instead of civilian public employees—to manage its central communications network.\textsuperscript{494} Similarly, he criticized the fire department for relying on firefighters rather than civilian union employees to manage its communications.\textsuperscript{495}

C. Bargaining Impasses

The law enjoins employers and the union elected as the employees’ exclusive bargaining representative to bargain in good faith over the terms and conditions of employment until they reach impasse, i.e., a deadlock. In the past year, collective bargaining disputes have arisen primarily among public school teachers and police officers.

For instance, Broward County’s 13,000 public school teachers reached an impasse with the Broward County School Board just before classes began last year.\textsuperscript{496} Disagreement ranged over wages, requiring teachers to meet after school hours, and the fate of an early retirement plan.\textsuperscript{497} Miami-Dade Community College (“MDCC”) teachers still had no contract with the MDCC District eighteen months after they voted to unionize in March, 1998.\textsuperscript{498} To make matters worse, the faculty union filed suit to revoke a four year contract extension for the district’s president who negotiated with the union.\textsuperscript{499} Finally, on February 1, 2000, MDCC’s unionized professors ratified a collective bargaining agreement containing their first pay raise in two years, but it required professors to spend thirty-five hours a week on campus—the agreement ended bitter fighting at the nation’s largest community college.\textsuperscript{500} Meanwhile, faculty at Broward Community College’s Central Campus were up in arms over a reorganization that eliminated

\textsuperscript{493}. Tyler Bridges, \textit{Union Leader Decries Budget Choices}, \textit{MIAMI HERALD} (Broward), Sept. 16, 1999, at 8B.
\textsuperscript{494}. \textit{Id}.
\textsuperscript{495}. \textit{Id}.
\textsuperscript{496}. Beth Reinhard, \textit{Teachers, Board at Impasse in Talks Over New Contract}, \textit{MIAMI HERALD} (Broward), Aug. 26, 1999, at 3B.
\textsuperscript{497}. \textit{Id}.
\textsuperscript{498}. Jack Wheat, \textit{Union Slams MDCC President’s Contract}, \textit{MIAMI HERALD} (Broward), Aug. 31, 1999, at 10B.
\textsuperscript{499}. \textit{Id}.
\textsuperscript{500}. Jack Wheat, \textit{Community College, Professors Hammer Out Contract}, \textit{MIAMI HERALD} (Broward), Feb. 1, 2000, at 8B.
faculty positions. It is estimated that Florida will need 100,000 new public school teachers by the end of the decade, leading school districts and teachers unions to come up with innovative ways of reducing the attrition rate among all teachers, but especially among beginning teachers.

In law enforcement, the City of Miramar and its police union have all but agreed to a new contract after ten months of negotiations. In June, 1999, the union rejected the city's contract terms, 107 to zero. Finally, the parties resolved differences over salary and overtime pay. Other noteworthy provisions of the proposed contract include cutting off-duty overtime pay for time spent on standby for court appearances in exchange for across-the-board wage increases, and increasing the minimum pay officers receive for their court appearances. Several months later, relations between the Miramar police officers and the police chief were strained over new policies, and a department reorganization was undertaken by the chief without consultation with the union. Similarly, a survey conducted by the Pinecrest Police Union uncovered unrest in the department over understaffing and fears of retaliation against whistleblowers.

VII. CONCLUSION

Public sector employment law covers a lot of ground. Every stage of employment, from hiring, to the terms of employment, to employment discrimination, to discipline and discharge, and even retirement, unemployment, and pensions raise a host of legal issues that sorted out under federal or state constitutions, under federal, state, or local statutory law, or under the common law governing torts and contracts. To complicate matters, some laws cover both private and public employees, some cover only one or the other, and some employees are not covered at all. As this article makes clear, both public employees as well as public officials are

501. Lisa Arthur and Wanda DeMarzo, Faculty, Provost Skirmish at BCC, MIAMI HERALD (Broward), Mar. 23, 2000, at 1B.
502. Robert Sanchez, Schools, Unions Do Homework to Cut Teacher Attrition Rates, MIAMI HERALD (Broward), Mar. 21, 2000, at 8B.
504. Id.
505. Id.
506. Id.
507. Juan Carlos Rodriguez, Miramar Officers, Chief Will Meet in Attempt to Ease Strife, MIAMI HERALD (Broward), Feb. 10, 2000, at 3B.
508. Eunice Ponce, Survey of Pinecrest Ranks Shows Problems, Police Union Says, MIAMI HERALD (Broward), June 25, 2000, at 3B.
always under the watchful eye of the news media. This means that any measure of wrongdoing, whether willfully or innocently committed, is grist for the newspaper mill. For this reason, legal issues involving public officials (and even employees) are fresh as this morning’s headlines.